

THE
LAW REPORTS.

Under the Superintendence and Control of the
INCORPORATED COUNCIL OF LAW REPORTING FOR ENGLAND AND WALES.

THE
COMPLETE CURRENT DIGEST
1917. *mc*

CASES REPORTED IN THE
"LAW REPORTS," "WEEKLY NOTES"
AND ALL OTHER CONTEMPORANEOUS
REPORTS,

TOGETHER WITH A NOTE OF THE MORE IMPORTANT
STATUTES, RULES, ORDERS, AND PARLIAMENTARY PAPERS
AFFECTING THE PROFESSION
PASSED OR ISSUED DURING THE YEAR.

COMPILED BY
JAMES ROBERT VERNAM MARCHANT, M.A.,
OF WADHAM COLLEGE, OXFORD, AND GRAY'S INN, BARRISTER-AT-LAW.

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THE COMPLETE CURRENT DIGEST, 1917.

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List of Abbreviations.—In this Digest the following abbreviations are used.

A. C.	House of Lords and Privy Council Appeal cases.	L. T.	Law Times Reports
Appx.	Appendix.	Loc Govt. . . .	Local Government
Asp. Mar. Law Cas.	Aspinall's Maritime Law Cases (New Series).	Lon. Gaz. . . .	The London Gazette.
Att.-Gen.	Attorney-General	M.R.	Master of the Rolls.
Bd.	Board.	Mans.	Mansel Bankruptcy and Company Cases
B. W. C. C. . . .	Butterworth's Workmen's Compensation Cases.	Merch. Shipp. . .	Merchant Shipping
B. C.	Borough Council.	Metrop.	Metropolis (for Metropolitan)
c.	chapter.	O.	Order
C. B. C.	County Borough Council	O. in C.	Order in Council
C. C.	County Council.	P.	President or Probate.
C. A.	Court of Appeal.	p.	page.
C. C. A.	Court of Criminal Appeal.	P. C.	The Judicial Committee of the Privy Council.
C. C. C.	Central Criminal Court.	Plt.	Plaintiff.
C. C. R.	Crown Cases Reserved.	pp.	pages
Ch.	Chancery.	pt.	part.
C.I.f.	Cost, freight and insurance	Parl.	Parliament (or Parliamentary)
Co.	Company.	Q. B.	Queen's Bench
col.	column	R.	Rule (or Rules) of Court
Com. Cas.	Reports of Commercial Cases.	R. D. C.	Rural District Council.
Commrs.	Commissioners.	R. P. C.	Reports of Patent, Design and Trade Mark Cases.
Cox, C. C.	Cox's Criminal Cases.	R. S. C.	Rules of the Supreme Court.
Cr. App. R. . . .	Criminal Appeal Cases.	Reg.	The Queen.
Ct. Just.	Court of Justiciary.	Reg. Cas.	Registration Cases.
Ct. Sess.	Court of Session.	Regs.	Regulations
Deft.	Defendant	Rev.	Revenue.
Div. Ct.	Divisional Court.	ry.	railway.
E.	England.	Sc.	Scotland.
Eccles.	Ecclesiastical.	S. C.	Session Cases (Scotland)
F.	Form (or Forms)	s.	section.
F.o.b.	Free on board.	ss.	sections
H. B. R.	Hansell's Bankruptcy Cases.	Sched.	Schedule
H. L.	House of Lords	Sec.	Secretary.
H. M.	His Majesty the King.	S. J.	Solicitors' Journal.
Ir.	Ireland.	St. O. P.	Stationery Office Publication.
I. R.	Irish Reports.	St. R. & O. . . .	Statutory Rules and Orders.
J. C.	Judicial Committee of the Privy Council.	T. C.	Tax cases.
J. P.	Justice of the Peace Reports.	T. L. R.	Times Law Reports
J.—JJ.	Justice—Justices	Treas.	Treasury.
K. B.	King's Bench	U. D. C. or U. C. .	Urban District Council
Ld.	Limited.	U. K.	United Kingdom of Great Britain and Ireland.
I. G. R.	Knight's Local Government Reports	Vol.	Volume
L. J.	Law Journal Reports.	W. N.	Weekly Notes
L.J.	Lord Justice	W. C. and Ins. Rep.	Reports of Cases under the Workmen's Compensation Acts and on Insurance Law.

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Dicta in, disapproved. *ARMSTRONG v. JACKSON* - [1917] 2 K. B. 822
- Cohen v. Mitchell* - (1890) 25 Q. B. D. 262
Referred to. *HILL v. SETTLE*
C. A. [1917] 1 K. B. 319
- Collins v. Sedgwick* - [1917] 1 Ch. 179
Followed. *In re CONDAN. CONDAN v. STARK* - [1917] 1 Ch. 639
- Collman v. Roberts* - [1896] 1 Q. B. 457
Referred to. *WALLACE v. DIXON*
Div. Ct. (Ir.) [1917] 2 I. R. 236, 243
- Considine v. McInerney* - [1916] 2 A. C. 162
Dictum of Lord Loreburn in, explained. *WATTS v. MANCHESTER CORPORATION*
C. A. [1917] 1 K. B. 791
- Cooper v. Cooper* - (1874) L. R. 7 H. L. 53
Explained. *VANNECK v. BENHAM* [1917] 1 Ch. 60
- Cooper v. Wales* - [1915] 3 K. B. 210
Applied. *SHADDICK v. PALMER'S SHIPBUILDING Co.* - C. A. 86 L. J. (K. B.) 1017
- Copiapo Mining Co., In re*, (1894) 10 T. L. R. 180; Annual Practice, 1917, p. 1121.
Observations of Lindley L.J. in, dis-
cussed. *NASH v. ROCHFORD R. D. C.*
C. A. [1917] 1 K. B. 384
- Cornelius v. Phillips* - [1916] 2 K. B. 719
Appeal allowed
H. L. (E.) [1917] W. N. 371
- Countess of Warwick Steamship Co. v. Le Nickel Société Anonyme*, [1917] W. N. 132.
Affirmed - C. A. [1917] W. N. 320
- Cowan v. Milbourn* - (1867) L. R. 2 Ex. 230
Overruled. *BOWMAN v. SECULAR SOCIETY, LD.* - H. L. (E.) [1917] A. C. 406
- Cox v. Dublin City Distillery*, [1906] 1 I. R. 446;
[1915] 1 I. R. 345.
Reversed - C. A. (Ir.) [1917] 1 I. R. 203

- Cox v. Hakes* - - - (1890) 15 App. Cas. 506
Distinguished. *HOLLINSHEAD v. McLOUGHLIN* - - - H. L. (Ir.) [1917] W. N. 384
- Crane, In re* - - - [1908] 1 Ch. 379
Distinguished. *In re RAMSAY. THORPE v. RAMSAY* - - - [1917] 2 Ch. 64
- Craske v. Wigan* - [1909] 2 K. B. 635, 638
Dictum of Cozens-Hardy M.R. in, discussed. *THOM (MARGARET) OR SIMPSON v. SINCLAIR* - H. L. (Sc.) [1917] A. C. 127
Distinguished. *FEARNLEY v. BATES & NORTHCLIFFE* - - - C. A. 86 L. J. (K. B.) 1000
- Crittall Manufacturing Co. v. London C. C.*, (1910) 75 J. P. 203.
Observed upon. *HAMPTON v. GLAMORGAN C. C.* - H. L. (E.) [1917] A. C. 13
- Crosby v. Leng* - - - (1810) 12 East, 409
Referred to. *ADMIRALTY COMMRS. v. S.S. AMERIKA* - - - H. L. (E.) [1917] A. C. 38, 48
- Crown Bank, In re* - (1890) 44 Ch. D. 634
In re ANGLO-CUBAN OIL, BITUMEN, AND ASPHALT CO. - - - C. A. [1917] 1 Ch. 477
- Daimler Co. v. Continental Tyre and Rubber Co.*, [1916] 2 A. C. 307, 346.
Distinguished. *In re HILCKES. Ex parte MUHESA RUBBER PLANTATIONS, LD.* - - - C. A. [1917] 1 K. B. 48
- Daimler Co. v. Continental Tyre and Rubber Co. (Great Britain)*, [1916] 2 A. C. 307, 347.
Observations of Lord Parker in, applied. *TINGLEY v. MÜLLER* - C. A. [1917] 2 Ch. 144
- Dalglisch v. Jarvie* - (1850) 2 Mac. & G. 231
Followed and applied. *REX v. KENSINGTON INCOME TAX COMMRS.* - C. A. [1917] 1 K. B. 486
- D'Angibau, In re* - - (1880) 15 Ch. D. 228
Followed. *In re PRYCE. NEVILL v. PRYCE* - - - [1917] 1 Ch. 234
- D'Auvergne v. Cooper* - [1899] W. N. 256
Commented upon. *HOSACK v. ROBINS* - C. A. [1917] 1 Ch. 332
- Davies v. Powell Duffryn Steam Coal Co.*, (1916) 115 L. T. 774.
Affirmed - C. A. [1917] 1 Ch. 488
- Davies v. Rhondda U. D. C.* - [1917] W. N. 139
Appeal allowed C. A. [1917] W. N. 321
- Dawkes v. Coveleigh* - - (1652) Sty. 346
Referred to. *ADMIRALTY COMMRS. v. S.S. AMERIKA* - - - H. L. (E.) [1917] A. C. 38, 48
- Dawkins v. Lord Rokeby* - (1866) 4 F. & F. 806
Approved and applied. *REX v. ARMY COUNCIL. Ex parte RAVENSCROFT* - Div. Ct. [1917] 2 K. B. 504
- Debtor, In re a* - - - [1903] 1 K. B. 705
Discussed and applied. *In re A DEBTOR. Ex parte THE PETITIONING CREDITOR* - C. A. [1917] 2 K. B. 60
- Debtor, In re a* - - - [1915] 1 K. B. 287
Explained and distinguished. *In re A DEBTOR (No. 28 of 1917). Ex parte THE PETITIONING CREDITORS v. THE DEBTOR* - Div. Ct. [1917] 2 K. B. 808
- Degg v. Midland Ry. Co.*, (1857) 1 H. & N. 773.
Distinguished. *HAYWARD v. DRURY LANE THEATRE, LD. AND MOSS' EMPIRES, LD.* - - - C. A. [1917] 2 K. B. 899
- Delves v. Delves* - - (1875) L. R. 20 Eq. 77
Dictum of Malins V.-C. in, disapproved. *In re LONGVALE BRICK AND LIME WORKS* - C. A. (Ir.) [1917] 1 I. R. 321
- Dempsey v. Caldwell & Co.* - 1914 S. C. 28
Followed. *MULLIGAN v. GLASGOW CORPORATION* - Ct. Sess. (Sc.) 10 B. W. C. C. 475
- Dennis v. White (A. J.) & Co.*, [1916] 2 K. B. 1.
Reversed - H. L. (E.) [1917] A. C. 479
- D'Este's Settlement Trusts, In re* - [1903] 1 Ch. 898
Distinguished. *In re WILKINSON'S SETTLEMENT. BUTLER v. WILKINSON* [1917] 1 Ch. 620
- Dewhurst & Sons' Trade Mark, In re*, [1896] 2 Ch. 137.
Applied. *In re CRISPIN & CO.'S TRADE MARK* - [1917] 2 Ch. 267
- D'Huart v. Harkness* - (1865) 34 Beav. 324
Followed. *In re WILKINSON'S SETTLEMENT. BUTLER v. WILKINSON* [1917] 1 Ch. 620
- Distington Hematite Iron Co. v. Possehl & Co.*, [1916] 1 K. B. 811.
Followed. *MARSHALL v. GLANVILL* - Div. Ct. [1917] 2 K. B. 87
- Doe v. Evans* - - - (1839) 10 Ad. & E. 228
Discussed. *In re CHURCHILL TAYLOR v. MANCHESTER UNIVERSITY* [1917] 1 Ch. 206
- Doe v. Gallini* - - (1833) 5 B. & Ad. 621
Distinguished. *In re HOBBS. HOBBS v. HOBBS* - C. A. [1917] 1 Ch. 569
- Douglas, In re, Obert v. Barrow*, 35 Ch. D. 472.
Distinguished. *COMMRS. OF CHARITIES v. Mc CARTAN* - [1917] 1 I. R. 388
- Dower v. Dower* - - (1885) 15 L. R. Ir. 264
Approved. *In re TURNER* [1917] 1 Ch. 422
- D'Oyly, In re* - - - [1917] 1 Ch. 556
Distinguished. *In re EVE. HALL v. EVE* - - - [1917] 1 Ch. 562
- Du Cros' Applications, In re* - [1913] A. C. 624
Distinguished. *In re BRITISH THOMSON-HOUSTON & CO.'S APPLICATION* [1917] W. N. 88
- Dugdale v. Lovering* - (1875) L. R. 10 C. P. 200
Considered. *CORY v. LAMETON AND HETTON COLLIERIES* - C. A. 115 L. T. 378
- Dunlop Pneumatic Tyre Co. v. Dunlop Motor Co.*, [1907] A. C. 430.
Discussed. *ALBION MOTOR CAR CO. v. ALBION CARRIAGE AND MOTOR BODY WORKS, LD.* - - - 34 R. P. C. 257

- Durham Bros. v. Robertson* - [1898] 1 Q. B. 765
Applied. *JONES v. WOODWARD*
116 L. T. 378
- Dykes v. Blake* - (1838) 4 Bing. N. C. 463, 477
Discussed and explained. *HOLLIDAY v. LOCKWOOD* - [1917] 2 Ch. 47
- Earle v. Kingscote* - - - [1900] 2 Ch. 585
Followed. *COLE v. DE TRAFFORD AND WIFE* - Div. Ct. [1917] 1 K. B. 911
- Ebbw Vale Steel, &c., Co. v. Macleod & Co.,*
(1916) 32 T. L. R. 485.
Affirmed - - H. L. (E.) [1917]
W. N. 109
- Embury, In re, Page v. Bowyer* - 109 L. T. 511
Distinguished. *In re LANGLANDS. LANGLANDS v. LANGLANDS*
117 L. T. 11
- Enlayde, Ltd. v. Roberts* - - [1917] 1 Ch. 109
Distinguished. *UPJOHN v. HITCHENS. UPJOHN v. FORD* - [1917] W. N. 356
- Errington v. Carrick* - (1728) 5 Bro. P. C. 391
Distinguished. *In re WILLIS. CROSSMAN v. KIRKALDY* - [1917] 1 Ch. 365
- Erskine v. Adeane* - (1873) L. R. 8 Ch. 756
Applied. *CHEATER v. CATER*
C. A. [1917] W. N. 365
- Everall v. Brown*, [1905] 2 K. B. 196; [1906] 2 K. B. 884.
Applied. *SARGEANT v. WATTS*
Div. Ct. [1917] 2 K. B. 624
- Ewing v. Buttercup Margarine Co.,* [1917] W. N. 89; 34 R. P. C. 232.
Affirmed - - C. A. [1917] 2 Ch. 1
Followed. *ALBION MOTOR CAR CO. v. ALBION CARRIAGE AND MOTOR BODY WORKS, LD.* - - 34 R. P. C. 257
- Exmouth (Viscount), In re*, (1883) 23 Ch. D. 158.
Applied. *In re FOWLER* - C. A. [1917] 2 Ch. 307
- Farnworth Local Board v. Compton*, (1886) 34 W. R. 334.
Explained. *BRISTOL CORPORATION v. SINNOTT* - - [1917] 2 Ch. 340
- Fawsitt, In re* - - (1885) 30 Ch. D. 231
Applied. *REX v. WESTMINSTER ASSESSMENT COMMITTEE. Ex parte LONDON AND PROVINCIAL VICTUALLERS, LD.* - - C. A. [1917] 2 K. B. 215
- Ferguson v. Inland Rev. Commrs.,* [1916] 2 K. B. 553.
Affirmed - C. A. [1917] 1 K. B. 193
- Fletcher, In re, Reading v. Fletcher*, [1917] 1 Ch. 147.
Reversed - C. A. [1917] 1 Ch. 339
- Fletcher v. Ashburner* (1779), 1 Bro. C. C. 497; 1 Wh. & T. L. C. 8th ed. 347.
Distinguished. *TALBOT v. JEVERS*
C. A. [1917] 2 Ch. 363, 368
- Fletcher v. Rylands*, (1866) L. R. 1 Ex. 265; (1868) L. R. 3 H. L. 330.
Referred to. *GREENOCK CORPORATION v. CALEDONIAN RY.* - H. L. (Sc.) [1917] A. C. 556
- HOLGATE v. BLEAZARD*
Div. Ct. [1917] 1 K. B. 443
- Foley v. Burnell*, (1783) 1 Bro. C. C. 274, 285; (1785) 4 Bro. P. C. 319.
Principle established by, applied. *In re BERESFORD-HOPE. ALDENHAM v. BERESFORD-HOPE* - [1917] 1 Ch. 287
- Forder v. Great Western Ry. Co.,* [1905] 2 K. B. 532.
Applied. *BUCKTON v. LONDON AND NORTH WESTERN RY. CO.* 117 L. T. 556
- Forsbrook v. Forsbrook* - (1867) L. R. 3 Ch. 93
Distinguished. *In re HOBBS. HOBBS v. HOBBS* - C. A. [1917] 1 Ch. 56
- Fortlage, In re* - - - [1916] W. N. 214
Not followed. *In re MASSON. MORTON v. MASSON* - C. A. [1917] W. N. 252
- Foster v. Great Western Ry. Co.,* (1882) 8 Q. B. D. 515.
Discussed. *GRAY v. LORD ASHBURTON*
H. L. (E.) [1917] A. C. 26
- Fowler, In re, Fowler v. Fowler*, [1917] W. N. 114.
Affirmed - C. A. [1917] 2 Ch. 307
- Fowler v. Midland Electric Corporation for Power Distribution, Ltd.,* [1917] 1 Ch. 527.
Affirmed - C. A. [1917] 1 Ch. 656
- Francis v. Cockrell* - (1870) L. R. 5 Q. B. 501
Considered. *LIEBIG'S EXTRACT OF MEAT CO. v. MERSEY DOCKS AND HARBOUR BOARD AND NELSON & SONS*
117 L. T. 380
Followed and applied. *MACLENNAN v. SEGAR* - - [1917] 2 K. B. 325
- Fraser v. Military Authorities*, [1917] W. N. 147; 116 L. T. 447.
Followed. *RIDOUT v. COPE*
Div. Ct. [1917] 2 K. B. 706, 712
- STONE v. WOOD* - - - Div. Ct. [1917] 2 K. B. 885
- Freeman v. Cooke* - - - (1848) 2 Ex. 654
Followed. *PIERSON v. ALTRINCHAM U. D. C.* - Div. Ct. 86 L. J. (K. B.) 969
- Fulton v. Andrew* - (1875) L. R. 7 H. L. 448
Referred to. *GREGSON v. TAYLOR*
[1917] P. 256
- Galloway v. Galloway* - (1914) 30 T. L. R. 531
Applied. *LAW v. HARRAGEN*
33 T. L. R. 381
- Gane v. Norton Hill Colliery Co.,* [1909] 2 K. B. 539.
Distinguished. *LANCASHIRE AND YORKSHIRE RY. v. HIGHLEY*
H. L. (E.) [1917] A. C. 352
- Gateshead Guardians v. Durham C. C.,* [1917] W. N. 136.
Reversed - C. A. [1917] W. N. 240

- George v. James* - - [1914] 1 K. B. 278
Referred to. WALLACE v. DIXON
Div. Ct. (Ir.) [1917] 2 I. R. 241
- German Date Coffee Co., In re*, (1882) 20 Ch. D. 169.
Discussed. *In re* ANGLO-CEBAN OIL, BITUMEN, AND ASPHALT CO.
C. A. [1917] 1 Ch. 477
- Germania, The* - - - [1916] P. 5
Affirmed - J. C. [1917] A. C. 375
- Gilmour & Co.* - - (1901) 6 Com. Cas. 72
Commented upon and distinguished.
LEVY v. GOLDHILL - [1917] 2 Ch. 297
- Gimson v. Woodfull* - (1825) 2 C. & P. 41
Referred to. ADMIRALTY COMMISSIONERS v. S.S. AMERIKA - - H. L. (E.)
[1917] A. C. 38, 48
- Gold Co., In re* - - (1879) 12 Ch. D. 77
Dicta in, considered. *In re* A DEBTOR (No. 3 of 1909). *Ex parte* GOLDSTEIN
Div. Ct. [1917] 1 K. B. 558
- Goring v. Mahlstedt* - - [1907] A. C. 225
Followed and applied. *In re* BROWN.
LEEDS v. SPENCER - [1917] 2 Ch. 232
- Grand Surrey Canal v. Hall*, (1840) 1 M. & G. 392.
Applied. ATT.-GEN. v. HEMINGWAY
15 L. G. R. 161
- Great Central Ry. Co. v. Hewlett*, [1916] 2 A. C. 511.
Distinguished. MORRISON v. SHEFFIELD CORPORATION - C. A.
[1917] 2 K. B. 866
- Great Eastern Ry. Co. v. Hackney District Board of Works*, (1883) 8 App. Cas. 687.
Followed. MACEY v. JAMES
86 L. J. (K. B.) 1257
- Great Indian Peninsula Ry. Co. v. Saunders*, (1861) 1 B. & S. 41; (1862) 2 B. & S. 266.
Distinguished. WILSON BROTHERS BOBBIN CO. v. GREEN [1917] 1 K. B. 860
- Great Western Ry. Co. v. Helps*, 86 L. J. (K. B.) 1006.
Affirmed - H. L. (E.) [1917] W. N. 363
- Great Western Ry. Co. v. Wills*, [1915] 1 K. B. 199.
Reversed - H. L. (E.) [1917] A. C. 148
- Greenwood v. Joseph Nall & Co.*, [1915] 3 K. B. 97.
Reversed - H. L. (E.) [1917] A. C. 1
- Grey v. Friar* - - - (1854) 4 H. L. C. 565
Followed. BURCH v. FARROWS BANK. LD. - - [1917] 1 Ch. 606
- Guardian Assurance Co., In re*, (1917) 33 T. L. R. 155.
Reversed - C. A. [1917] 1 Ch. 431
- Guillemard v. Silverthorne*, (1908) 99 L. T. 584
Considered. NEW RIVER CO. v. CRUMPTON - - [1917] 1 K. B. 762
- Guthrie v. Kinghorn* - - 1913 S. C. 1155
Doubted. THOM OR SIMPSON v. SINCLAIR - - H. L. (Sc.)
[1917] A. C. 127
- Hagelberg (W.) Actien-Gesellschaft, In re*, [1916] 2 Ch. 503.
Applied. *In re* TH. GOLDSCHMIDT. LD. - - - [1917] 2 Ch. 194
- Hagen, The* - - - [1908] P. 189, 201
Followed and applied. REX v. KENSINGTON INCOME TAX COMMISSIONERS.
C. A. [1917] 1 K. B. 486
- Hakan, The* - - - [1916] P. 266
Affirmed - J. C. [1917] W. N. 289
- Hall-Dare v. Hall-Dare*, (1885) 31 Ch. D. 251
Discussed and followed. MEEKING v. MEEKING - - [1917] 1 Ch. 77
- Halsted, In re, Ex parte Richardson*, [1916] 2 K. B. 902.
Affirmed - C. A. [1917] 1 K. B. 695
- Hampden v. Earl of Buckinghamshire*, [1893] 2 Ch. 531.
Applied. *In re* CHARTERIS. CHARTERIS v. BIDDULPH - [1917] 1 Ch. 377
- Hampton v. Glamorgan C. Co.*, (1915) 84 L. J. (K. B.) 1506.
Affirmed - H. L. (E.) [1917] A. C. 13
- Harse v. Pearl Life Assurance Co.*, [1904] 1 K. B. 558.
Followed. GOLDSTEIN v. SALVATION ARMY ASSURANCE SOCIETY
Div. Ct. [1917] 2 K. B. 291
- Hartley, In the Goods of*, (1898) 68 L. J. (P.) 16.
Referred to. TALBOT v. JEVERS
C. A. [1917] 2 Ch. 363, 375
- Haslock v. Fergusson* - - (1837) 7 Ad. & E. 86
Followed. BANBURY v. BANK OF MONTREAL - C. A. [1917] 1 K. B. 409
- Hastie's Trusts, In re* - (1887) 35 Ch. D. 728
Followed. *In re* HORNER 115 L. T. 703
- Hatch, In re* - - - [1916] W. N. 240
Applied. *In re* EVE. HALL v. EVE [1917] 1 Ch. 562
- Hearle v. Hicks* - - (1831) 1 Cl. & Fin. 20
Applied. PENNEFATHER v. LLOYD
[1917] 1 I. R. 337
- Heathcote v. Hainchwood Collieries. Ltd.*, [1917] 1 K. B. 450.
Reversed - - - H. L. (E.)
[1917] W. N. 318
- Heilbut, Symons & Co. v. Buckleton*, [1913] A. C. 30.
Applied. T. & J. HARRISON, LD. v. KNOWLES AND FOSTER - -
86 L. J. (K. B.) 1490
- Heilgers & Co. v. Cambrian Steam Navigation Co.*, 33 T. L. R. 348.
Affirmed - C. A. 34 T. L. R. 72
- Helliwell v. Haskins* - (1911) 9 L. G. R. 1060
Discussed. COX v. EVANS
Div. Ct. [1917] 1 K. B. 275
- Hellwig v. Mitchell* - - [1910] 1 K. B. 609
Followed. ORMISTON v. GREAT WESTERN RY. CO. - [1917] 1 K. B. 598
- Helps v. Great Western Ry. Co.*, 86 L. J. (K. B.) 1006.
Affirmed H. L. (E.) [1917] W. N. 363

- Hendon Paper Works Co. v. Sunderland Assessment Committee*, [1915] 1 K. B. 763.
Followed. *FOWLER (JOHN) & Co. (LEEDS) v. HUNSLET ASSESSMENT COMMITTEE - Div. Ct.* [1917] 1 K. B. 720
- Henry v. Smith* - (1842) 2 D. & War. 381
Principle of, applied. *In re TURNER. KLAFFENBERGER v. GROOMBRIDGE* [1917] 1 Ch. 422
- Herbert v. Samuel Fox & Co.*, [1916] 1 A. C. 405.
Applied. *MAYDEW v. CHATTERLEY-WHITEFIELD COLLIERIES, LD.* C. A. [1917] 2 K. B. 742
- Hickling v. Fair* - [1899] A. C. 15, 35
Principle approved of by Lord Davey in, applied. *In re WALKER. DUNKERLY v. HEWERDINE* [1917] 1 Ch. 38
- Higgins v. Butcher* - (1606) Noy, 18
Discussed. *ADMIRALTY COMMS. v. S.S. AMERIKA H. L. (E.)* [1917] A. C. 38
- Higgins v. Poulson* - [1912] 2 K. B. 292
Followed. *ROUND v. WATHEN & SONS* C. A. 86 L. J. (K. B.) 1011
- Highley v. Lancashire and Yorkshire Ry. Co.*, [1916] W. C. & Ins. Rep. 244.
Reversed - *H. L. (E.)* [1917] A. C. 352
- Hill v. Settle* - [1917] 1 Ch. 105
Reversed - C. A. [1917] 1 Ch. 319
- Hinde v. Evans* - (1906) 70 J. P. 548
Referred to. *GILL v. CARSON AND NIELD - Div. Ct.* [1917] 2 K. B. 674
- Hobbs, In re, Hobbs v. Hobbs*, [1917] W. N. 5
Affirmed - C. A. [1917] W. N. 111
- Hobbs, In re* - [1917] 1 Ch. 597
Dictum of Lord Cozens-Hardy M.R. in, applied. *In re ELTON. ELTON v. ELTON* - [1917] 2 Ch. 413
- Hogg v. Jones* - (1863) 32 Beav. 45
Distinguished. *In re FOWLER* C. A. [1917] 2 Ch. 307
- Hollins (William) & Co. v. Paget*, [1917] 1 Ch. 187.
Distinguished. *In re CONDRAN. CONDRAN v. STARK* - [1917] 1 Ch. 639
- Hollinshead v. McLoughlin* - [1916] 2 I. R. 283
Reversed - *H. L. (Ir.)* [1917] 2 I. R. 28
- Holmes v. Mather*, (1875) L. R. 10 Ex. 261, 268
Referred to. *ADMIRALTY COMMS. v. S.S. AMERIKA* - *H. L. (E.)* [1917] A. C. 38, 46
- Holmes v. North Eastern Ry. Co.*, (1869) L. R. 4 Ex. 254; (1871) 6 Ex. 123.
Followed. *HAYWARD v. DRURY LANE THEATRE, LD. AND MOSS' EMPIRES, LD.* - C. A. [1917] 2 K. B. 899
- Holmes v. Simmons*, (1868) L. R. 1 P. & M. 523, 529.
Dictum of Lord Penzance in, considered. *PLUMMER v. PLUMMER* C. A. [1917] P. 163
- Holness v. Mackay & Davis* - [1899] 2 Q. B. 319
Dissenting judgment of Romer L.J. in, approved per Lord Finlay L.C. *JOHN STEWART & SON (1912), LD. v. LONGHURST* - *H. L. (E.)* [1917] A. C. 249
- Hood v. West End Motor Car Packing Co.*, [1916] 2 K. B. 395.
Affirmed on different grounds C. A. [1917] 2 K. B. 38
- Hope, In re* - (1872) L. R. 7 Ch. 523
Referred to. *In re N., A SOLICITOR* [1917] W. N. 138
- Horton & Son v. Walsall Assessment Committee*, [1898] 2 Q. B. 237.
Followed. *FOWLER (JOHN) & Co. (LEEDS) v. HUNSLET ASSESSMENT COMMITTEE Div. Ct.* [1917] 1 K. B. 720
- Horwood v. Millar's Timber and Trading Co.*, [1916] 2 K. B. 44.
Affirmed - C. A. [1917] 1 K. B. 305
- Hosack v. Robins* - [1917] 1 Ch. 142
Affirmed - C. A. [1917] 1 K. B. 332
- How v. London and North Western Ry. Co.*, [1892] 1 Q. B. 391.
Applied. *COLE v. DE TRAFFORD AND WIFE - Div. Ct.* [1917] 1 K. B. 911
- Howell, In re, In re Buckingham, Liggins v. Buckingham* - [1915] 1 Ch. 241
Distinguished. *In re BOOTH. HATTEBSLEY v. COWGILL* 86 L. J. (Ch.) 270
- Hughes v. Bett* - 1915 S. C. 150
Followed. *DENNIS v. WHITE (A. J.) & Co.* - *H. L. (E.)* [1917] A. C. 479
- Hughes v. Coles* - (1884) 27 Ch. D. 231
Questioned. *In re TURNER* [1917] 1 Ch. 422
- Hulton v. Hulton* - [1916] 2 K. B. 642
Affirmed - C. A. [1917] 1 K. B. 813
- Humberston v. Humberston* - (1716) 1 P. Wms. 332
Referred to. *In re HOBBS. HOBBS v. HOBBS* - C. A. [1917] 1 Ch. 569
- Hummel v. Hummel* - [1898] 1 Ch. 642
Disapproved. *In re WILKINSON'S SETTLEMENT. BUTLER v. WILKINSON* [1917] 1 Ch. 620
- Hunt v. Richardson* - [1916] 2 K. B. 446
Discussed and followed. *GRIGG v. SMITH* - Div. Ct. 15 L. G. R. 69
Distinguished. *BOWEN v. JONES* Div. Ct. 86 L. J. (K. B.) 802
- Hunter v. Att.-Gen.* - [1899] A. C. 309
Followed. *COMMS. OF CHARITIES v. M'CARTAN* - [1917] 1 I. R. 388
- Hunter v. Nockolds* - (1849) 1 Mac. & G. 640
Quære: whether now law. In re TURNER - [1917] 1 Ch. 422
- Ibrahim v. Rex* - [1914] A. C. 599
Followed. *REX v. COLPUS (WILLIAM JAMES)* - C. C. A. 12 Cr. App. R. 193
- Indermaur v. Dames*, (1866) L. R. 1 C. P. 274; (1867) L. R. 2 C. P. 311.
Distinguished. *MACLENNAN v. SEGAR* [1917] 2 K. B. 325
- Followed. *PRITCHARD v. PETO* [1917] 2 K. B. 174

- Inland Rev. Commrs. v. Duke of Devonshire*, [1914] 2 K. B. 627.
Principles laid down in, applied. *FERGUSON v. INLAND REV. COMMS.*
C. A. [1917] 1 K. B. 193
- Inverkip Steamship Co. v. Bunge & Co.*, [1917]
1 K. B. 31.
Affirmed - C. A. [1917] 2 K. B. 193
- Ionides v. Universal Marine Insurance Co.*,
(1863) 14 C. B. (N. S.) 259.
Distinguished. *BRITISH AND FOREIGN STEAMSHIP CO. v. REX*
[1917] 2 K. B. 769
- Irish Land Commission v. Grant*, (1884) 10 App. Cas. 14.
Followed. *ASPLEN v. PULLIN*
Div. Ct. [1917] 1 K. B. 187
- Isuacs, In re* - - - [1894] 3 Ch. 506
Principle of, applied. *In re BOGG.*
ALLISON v. PAICE - [1917] 2 Ch. 239
- Johnston, In re* - - - [1904] 1 Ch. 132
Explained. *In re COMMONWEALTH OIL CORPORATION* - [1917] 1 Ch. 404
- Johnston v. Braham & Campbell, Ltd.*, [1916]
2 K. B. 529.
Affirmed - C. A. [1917] 1 K. B. 586
- Johnston v. Chestergate Hat Manufacturing Co.*,
[1915] 2 Ch. 338.
Distinguished. *COLLINS v. SEDGWICK*
[1917] 1 Ch. 179
- Jones v. Gibbons* - - - (1853) 8 Ex. 920
Considered and distinguished. *ROSS v. SHAW & Co.* - - - Div. Ct. (Ir.)
[1917] 2 I. R. 367
- Jones v. Hatherton* - - - [1917] 1 K. B. 148
Reversed - C. A. [1917] 2 K. B. 412
- Jones v. Ocean Coal Co.* - [1899] 2 Q. B. 124
Distinguished. *PRICE v. GUEST, KEEN & NETTLEFOLDS, LD.* - C. A. [1917]
1 K. B. 780
- Joynson v. Hunt & Son* - (1905) 93 L. T. 470
Applied. *LEVY v. GOLDHILL*
[1917] 2 Ch. 297
- Kastner & Co., In re* - - - [1917] 1 Ch. 390
Applied. *In re TH. GOLDSCHMIDT, LD.* - - - [1917] 2 Ch. 194
- Kate, The* - - - - - [1899] P. 165
Considered and explained. *THE PHILADELPHIA* - - - [1917] P. 101
- Keane's Estate, In re* - - [1903] 1 I. R. 215
Disapproved. *In re HOBBS. HOBBS v. HOBBS* - C. A. [1917] 1 Ch. 569
- Keene v. Thomas* - - - [1905] 1 K. B. 136
Approved. *GREEN v. ALL MOTORS, LD.*
C. A. [1917] 1 K. B. 625
- Kemp v. Lewis* - - - [1915] 3 K. B. 543
Followed. *POUNTNEY v. TURTON*
C. A. [1917] W. N. 353
- Kennedy, In re* - - - - [1917] 1 Ch. 9
Applied. *In re EVE. HALL v. EVE*
[1917] 1 Ch. 562
- Kennedy, In re, Corbould v. Kennedy*, [1916] 2 Ch. 379.
Reversed - - - C. A. [1917] 1 Ch. 9
- Kennedy v. Kennedy* - - - [1907] P. 49
Not followed. *PHILLIPS v. PHILLIPS*
[1917] P. 90
- Kerr v. Earl of Orkney* - (1857) 20 D. 298
Applied. *GREENOCK CORPORATION v. CALEDONIAN RY.* - - - H. L. (Sc.)
[1917] A. C. 556
- Kilkelly v. Powell* - - - [1897] 1 I. R. 457
Distinguished. *DAVY v. REDINGTON*
C. A. (Ir.) [1917] 1 I. R. 250
- Kim, The* - - - - - [1915] P. 215
Affirmed - - - J. C. 116 L. T. 577
- Kipps v. Lane* - - - (1917) 86 L. J. (K. B.) 735
Followed. *OFFORD v. HISCOCK*
Div. Ct. 86 L. J. (K. B.) 941
- Kirwan's Trusts, In re* - (1883) 25 Ch. D. 373
Dictum in, disapproved. *In re WILKINSON'S SETTLEMENT. BUTLER v. WILKINSON* - - - [1917] 1 Ch. 620
- Kronprinzessin Cecilie* - (1917) 33 T. L. R. 139
Affirmed - - - J. C. 33 T. L. R. 292
- Laues v. Bennett* - - - (1785) 1 Cox, 167
Principle of, applied. *In re BOGG.*
ALLISON v. PAICE - [1917] 2 Ch. 239
- Lawford v. Billericay R. Co.* - [1903] 1 K. B. 772
Followed. *FARADAY v. TAMWORTH UNION* - - - 86 L. J. (Ch.) 436
- Lawrence (Lord), In re* - - [1915] 1 Ch. 129
Applied. *In re ELTON. ELTON v. ELTON* - - - [1917] 2 Ch. 413
- Lawson, In re* - - - - [1914] 1 Ch. 682
Considered. *In re KING. JACKSON v. ATT.-GEN.* - - - [1917] 2 Ch. 420
- Lea v. Thursby* - - - - [1904] 2 Ch. 57
Distinguished. *In re FLETCHER*
[1917] 1 Ch. 147
- Leggott v. Western* - - - (1884) 12 Q. B. D. 287
Discussed. *HOSACK v. ROBINS*
[1917] 1 Ch. 142
- Leiston Gas Co. v. Leiston U. D. Co.*, [1916] 2 K. B. 428.
Followed. *WYCOMBE BOROUGH ELECTRIC LIGHT AND POWER CO. v. CHIPPING WYCOMBE CORPORATION*
15 L. G. R. 658
- Levi v. Berk* - - - (1886) 2 T. L. R. 898
Followed. *In re HARRISON AND MICKS, LAMBERT & Co.* - Div. Ct. [1917]
1 K. B. 755
- Lewis v. Great Western Ry. Co.*, 3 Q. B. D. 195
Applied. *JOSHUA BUCKTON & Co. v. LONDON AND NORTH WESTERN RY. CO.*
117 L. T. 556
- Leyland Shipping Co. v. Norwich Union Fire Insurance Society*, (1916) 115 L. T. 219.
Affirmed - - - C. A. 33 T. L. R. 228
- Lilford (Lord) v. Att.-Gen.*, (1867) L. R. 2 H. L. 63.
Applied. *In re FOWLER* - - - C. A.
[1917] 2 Ch. 397

- Lilly & Co. v. Stephenson & Co.*, (1895) 22 R. 278.
Dictum of Lord Trayner in, disapproved. *INVERKIP STEAMSHIP CO. v. BUNGE & Co.* C. A. [1917] 2 K. B. 193
- Liverpool Adelphi Loan Association v. Fairhurst*, (1854) 9 Ex. 422.
Followed. *COLE v. DE TRAFFORD AND WIFE* - Div. Ct. [1917] 1 K. B. 911
- Lloyd Royal Belge Société Anonyme v. Stathatos*, 33 T. L. R. 390.
Affirmed - C. A. 34 T. L. R. 70
- London C. C., In re* - (1904) 91 L. T. 501
Approved. *LONDON C. C. v. GALS-WORTHY* - C. A. [1917] 1 K. B. 902
- London C. C. v. Galsworthy* - [1917] 1 K. B. 85
Affirmed - C. A. [1917] 1 K. B. 902
- Longhurst v. Stewart (John) & Son* (1912), *Ld.*, [1916] 2 K. B. 803.
Affirmed - H. L. (E.) [1917] A. C. 249
- Loveland, In re* - - - [1906] 1 Ch. 542
Followed. *In re HORNER* 115 L. T. 703
- Lowe v. Thomas* - - (1854) 5 D. M. & G. 315
Followed. *In re GLIDDON. SMITH v. GLIDDON* - - - [1917] 1 Ch. 174
- Luna, The* - - - (1810) Edw. 190
Followed. *THE SIGURD* - [1915] P. 250
- Lupton, In re* - - - [1905] P. 321
Applied. *In re FOWLER* - C. A. [1917] 2 Ch. 307
- Lyons v. Woodilee Coal and Coke Co.*, 1916 S. C. 719.
Affirmed. H. L. (Sc.) 86 L. J. (P. G.) 187
- Mackesy v. Mackesy* - - [1896] 1 I. R. 511
Distinguished. *DAVY v. REDINGTON* C. A. (Ir.) [1917] 1 I. R. 250
- Mackey v. Monks (James Henry) (Preston), Ld.*, [1916] 2 I. R. 241.
Appeal allowed - H. L. (Ir.) [1917] 2 I. R. 622; [1917] W. N. 318
- Mackill v. Wright*, (1888) 14 App. Cas. 106.
Distinguished. *W. MILLAR & Co., Ld. v. S.S. FREDEN (OWNERS)* [1917] 2 K. B. 657
- McLaren v. Thomson* - - [1917] 2 Ch. 41
Affirmed - C. A. [1917] 2 Ch. 261
- McLoughlin, In re* - - [1916] 2 I. R. 283
Reversed H. L. (Ir.) [1917] 2 I. R. 28
- Macmillan v. London Joint Stock Bank, Ld.*, [1917] 1 K. B. 363.
Affirmed - C. A. [1917] 2 K. B. 439
- M'Neice v. Singer Sewing Machine Co.*, 1911 S. C. 12.
Followed. *DENNIS v. WHITE (A. J.) & Co.* - H. L. (E.) [1917] A. C. 479
- Malins v. Freeman*, (1838) 4 Bing. N. C. 395
Referred to. *In re NEW ZEALAND SHIPPING CO. AND SOCIÉTÉ DES ATELIERS ET CHANTIERS DE FRANCE* C. A. [1917] 2 K. B. 717
- Markham v. Cob* - - - (1625) Latch. 144
Referred to. ADMIRALTY COMMS. v. S.S. AMERIKA - H. L. (E.) [1917] A. C. 38, 48
- Marks v. Frogley* - - [1898] 1 Q. B. 888
Approved and applied. *REX v. ARMY COUNCIL. Ex parte RAVENSCROFT* Div. Ct. [1917] 2 K. B. 504
- Marshall v. Orient Steam Navigation Co.*, [1910] 1 K. B. 79.
Applied. *BOWER v. MEGGITT* - C. A. 86 L. J. (K. B.) 463
- Marshall's Settlement, In re* - [1905] 2 Ch. 325
Followed. *In re MONCKTON'S SETTLEMENT. MONCKTON v. CALDER* [1917] 1 Ch. 224
- Marshall, Sons & Co. v. Price*, [1914] 3 K. B. 1047.
Referred to. *CARLTON MAIN COLLIERY CO. v. CLAWLEY* - C. A. [1917] 2 K. B. 691, 704
- Marten v. Whale* - - [1917] 1 K. B. 544
Affirmed - C. A. [1917] 2 K. B. 480
- Maskinonge Steamship Co. v. Dominion Coal Co.*, (1916) 33 T. L. R. 132.
Reversed - - - 33 T. L. R. 340
- Mason v. Mason* - - [1910] 1 Ch. 695
Followed. *In re BARCLIE* [1917] 1 I. R. 1
- Masson, In re, Morton v. Masson*, [1917] W. N. 182.
Reversed - C. A. [1917] W. N. 252
- Meguerditchian v. Lightbound* - [1917] 1 K. B. 297
Affirmed - C. A. [1917] 2 K. B. 298
- Melton, In re, Milk v. Towers*, 86 L. J. (Ch.) 708; [1917] W. N. 215.
Affirmed - C. A. [1917] W. N. 310
- Metropolitan Bank v. Pooley*, (1885) 10 App. Cas. 210.
Dictum of Lord Selborne in, considered. *NEVILLE v. LONDON EXPRESS NEWS-PAPERS, LD.* - C. A. [1917] W. N. 203
- Metropolitan Water Board v. Avery*, [1914] A. C. 118.
Distinguished. *BARRETT v. ILKESTON CORPORATION* - [1917] 1 K. B. 827
- Metropolitan Water Board v. Dick, Kerr & Co.*, [1917] 2 K. B. 1.
Affirmed - H. L. (E.) 34 T. L. R. 113
- Michael v. Spiers & Pond* - (1909) 101 L. T. 352
Followed. *ORMISTON v. GREAT WESTERN RY. CO.* - [1917] 1 K. B. 598
- Midland Insurance Co. v. Smith*, (1881) 6 Q. B. D. 561.
Referred to. ADMIRALTY COMMS. v. S.S. AMERIKA - H. L. (E.) [1917] A. C. 38, 49
- Midland Ry. Co. v. Warner, Sons & Co.*, (1916) 33 T. L. R. 75.
Affirmed - C. A. 116 L. T. 662
- Miles v. Harford* - - (1879) 12 Ch. D. 691
Followed. *In re BERESFORD-HOPE ALDENHAM v. BERESFORD-HOPE* [1917] 1 Ch. 287

- Mitsui & Co. v. Watts, Watts & Co.*, [1916] 2 K. B. 826.
 Varied - H. L. (E.) [1917] A. C. 227
- Modern Transport Co. v. Dunerig Steamship Co.*, [1916] 1 K. B. 726.
 Affirmed - C. A. [1917] 1 K. B. 370
- Moorcock, The* - (1889) 14 P. D. 64, 68
 Principle laid down by Bowen L.J. in, applied. *In re* ANGLO-RUSSIAN MERCHANT TRADERS, LD. AND JOHN BAITT & CO. (LONDON) - C. A. [1917] 2 K. B. 679, 683
- Moore v. Evans* - [1917] 1 K. B. 458
 Affirmed - H. L. (E.) [1917] W. N. 319
- Morris v. Hunt & Co.*, (1896) 12 Times L. R. 187.
 Commented upon and distinguished. *LEVY v. GOLDHILL* - [1917] 2 Ch. 297
- Morris v. Oceanic Steam Navigation Co.*, (1900) 16 T. L. R. 533.
 Distinguished. ANTHONY HORDERN & SONS, LD. v. COMMONWEALTH AND DOMINION LINE, LD. [1917] 2 K. B. 420
- Mountcashell (Earl of) v. Smyth*, [1895] 1 I. R. 346.
 Discussed. GREALEY v. SAMPSON C. A. (Ir.) [1917] 1 I. R. 286
- Moyes v. William Dixon, Ltd.*, (1905) 42 S. L. R. 319.
 Followed. SIMMS v. LILLESHELL COAL CO. - C. A. [1917] 2 K. B. 368
- Mundy and Roper's Contract, In re*, [1899] 1 Ch. 275.
 Followed. *In re* MONCKTON'S SETTLEMENT. MONCKTON v. CALDER [1917] 1 Ch. 224
- Neville v. London Express Newspapers, Ltd.*, [1917] 1 K. B. 402.
 Affirmed - C. A. [1917] 2 K. B. 564
- Neville v. Thacker* - (1888) 23 L. R. Ir. 344
 Distinguished. *In re* HOBBS. HOBBS v. HOBBS - C. A. [1917] 1 Ch. 569
- New Zealand Shipping Co. v. Société des Ateliers et Chantiers de France*, (1917) 33 T. L. R. 276.
 Affirmed - C. A. 33 T. L. R. 545
- Newbegin v. Bell* - (1857) 23 Beav. 386
 Followed. *In re* M'MORREN. WALKER v. M'KAY C. A. (Ir.) [1917] 1 I. R. 278
- Newell v. Starkie* - [1917] 2 I. R. 73
 Affirmed - C. A. (Ir.) [1917] 2 I. R. 621
- Nichols v. Marsland*, (1875-6) L. R. 10 Ex. 255; 2 Ex. D. 1.
 Distinguished. GREENOCK CORPORATION v. CALEDONIAN RY. CO. H. L. (Sc.) [1917] A. C. 556
- Nolisement (Owners) v. Bunge & Born*, [1916] 1 K. B. 805.
 Reversed - C. A. [1917] 1 K. B. 160
- Nord, The* - [1916] P. 53
 Followed. THE NEWHOLM 86 L. J. (P.) 131
- North Australian Territory Co., In re*, (1890) 45 Ch. D. 87.
 Dicta in, considered. *In re* A DEBTOR (No. 3 of 1909). *Ex parte* GOLDSTEIN Div. Ct. [1917] 1 K. B. 558
- North and South Wales Bank, Ltd. v. Macbeth*, [1908] 1 K. B. 13; [1908] A. C. 137.
 Followed and applied. TOWN AND COUNTY ADVANCE CO. v. PROVINCIAL BANK OF IRELAND - Div. Ct. (Ir.) [1917] 2 I. R. 421
- North British Ry. Co. v. Tod*, (1846) 12 Cl. & F. 722.
 Followed. TAFF VALE RY. CO. v. CARDIFF RY. CO. - C. A. [1917] 1 Ch. 299
- Nugent's Trusts, In re* - (1885) 19 L. R. Ir. 140
 Approved. *In re* TURNER. KLAFTENBERGER v. GROOMBRIDGE [1917] 1 Ch. 422
- Occleston v. Fullalove* - (1873) L. R. 9 Ch. 147
 Followed. *In re* HORNER 115 L. T. 703
- Oddenino v. Metropolitan Water Board*, [1914] 2 Ch. 734.
 Followed. BARRETT v. ILKESTON CORPORATION - [1917] 1 K. B. 827
- O'Mahony v. Burdett* - (1874) L. R. 7 H. L. 388
 Considered. *In re* COLLES'S ESTATE [1917] 1 I. R. 260
- O'Meagher v. Daly* - [1917] 1 I. R. 341
 Affirmed C. A. (Ir.) [1917] 1 I. R. 493
- Oram v. Hunt* - [1914] 1 Ch. 98
 Followed. NEVILLE v. LONDON EXPRESS NEWSPAPERS, LD. - C. A. [1917] 2 K. B. 564
- Orlebar's Settlement Trusts, In re*, (1875) L. R. 20 Eq. 711.
 Principle followed by Hall V.-C. in, applied. *In re* WALKER. DUNKERLY v. HEWERDINE - [1917] 1 Ch. 38
- Osborn v. Gillett* - (1873) L. R. 8 Ex. 95
 Referred to. ADMIRALTY COMMRS. v. S.S. AMERIKA - H. L. (E.) [1917] A. C. 38, 51
- Otley's Estate, In re* - [1910] 1 I. R. 1
 Not followed. MEEKING v. MEEKING [1917] 1 Ch. 77
- Pancoutsos v. Raymond Hadley Corporation of New York*, [1917] 1 K. B. 767.
 Affirmed - C. A. [1917] 2 K. B. 473
- Parker, In re, White v. Stewart*, [1917] W. N. 137.
 Affirmed - C. A. [1917] W. N. 233
- Parsons v. Hambridge*, (1916) 33 T. L. R. 117
 Reversed - C. A. 33 T. L. R. 346
- Payne v. Fortescue & Sons* - [1912] 3 K. B. 346
 Distinguished. SHADDICK v. PALMER'S SHIPBUILDING CO. - C. A. 86 L. J. (K. B.) 1017

- Peck and London School Board, In re*, [1893] 2 Ch. 315.
Followed. *In re* WALMSLEY AND SHAW'S CONTRACT - [1917] 1 Ch. 93
- Peers v. Caldwell, Taylor v. Caldwell*, [1916] 1 K. B. 371.
Discussed and not followed. *FORTE v. M'ALISTER* - - - Div. Ct. (Ir.) [1917] 2 I. R. 387
- Pentland's Estate, In re* - (1888) 22 L. R. Ir. 649
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- Penton v. Barnett* - - [1898] 1 Q. B. 276
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- Perry v. Wright* - - - [1908] 1 K. B. 414
Dictum of Cozens-Hardy M.R. (at p. 453) in, overruled. Dictum of Fletcher Moulton L.J. (at p. 460) approved. *GREENWOOD v. JOSEPH NALL & Co.* - H. L. (E.) [1917] A. C. 1
- Peru Republic v. Dreyfus Brothers & Co.*, (1886) 55 L. T. 802, 803.
Followed and applied. *REX v. KENSINGTON INCOME TAX COMMISSIONERS*. C. A. [1917] 1 K. B. 486
- Pethick, Dix & Co., In re* - [1915] 1 Ch. 26
Followed. *In re* RENISHAW IRON CO. [1917] 1 Ch. 199
- Pethick v. Mayor of Plymouth*, (1894) 70 L. T. 304
Followed. *MUDGE v. PENCE* U. D. C. 86 L. J. (Ch.) 126
- Plumb v. Golden Flour Mills Co.*, [1914] A. C. 66
Applied. *MAXDEW v. CHATTERLEY-WHITFIELD COLLIERIES* - - C. A. [1917] 2 K. B. 742
- Plumstead Board of Works v. British Land Co.*, (1875) L. R. 10 Q. B. 203.
Followed. *MACEY v. JAMES* Div. Ct. 86 L. J. (K. B.) 1257
- Porter v. Freudenberg* - [1915] 1 K. B. 857
Followed. *TINGLEY v. MÜLLER* C. A. [1917] 2 Ch. 144
- Potter v. Faulkner* - (1861) 1 B. & S. 800
Distinguished. *HAYWARD v. DRURY LANE THEATRE, LD. AND MOSS' EMPIRES, LD.* - - C. A. [1917] 2 K. B. 899
- Poulton v. London and South Western Ry. Co.*, (1867) L. R. 2 Q. B. 534.
Followed. *ORMISTON v. GREAT WESTERN RY. CO.* - [1917] 1 K. B. 598
- Prance v. London C. C.* - [1915] 1 K. B. 688
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- Price, In re* - - [1900] 1 Ch. 442, 447
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- Prinz Adalbert, The*, (1916) 13 Asp. Mar. Law Cas. 307.
Affirmed - - J. C. 116 L. T. 802
- Produce Brokers Co. v. Olympia Oil and Cake Co.*, [1916] 2 K. B. 296.
Affirmed - C. A. [1917] 1 K. B. 320
- Public Works Commrs. v. Logan*, [1903] A. C. 355
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- Puddephatt v. Leith* - - [1916] 2 Ch. 168
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- Pugh v. Williams* - (1917) 15 L. G. R. 573
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- Racine, The* - - - [1906] P. 273
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- Radclyffe v. Pacific Steam Navigation Co.*, [1910] 1 K. B. 685.
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- Rathdrum R. D. C. v. Saul*, (1905) 39 I. L. T. R. 270.
Considered. *NORTH DUBLIN R. D. C. v. WALSH* - Div. Ct. (Ir.) [1917] 2 I. R. 86
- Reg. v. Abbott* - - - [1897] 2 I. R. 362
Applied. *CANNON BREWERY CO. v. CENTRAL CONTROL BOARD (LIQUOR TRAFFIC)* - - [1917] W. N. 290
- Reg. v. Bolton* - - - (1841) 1 Q. B. 66
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- Reg. (Bridges and Ram) v. Armagh Justices*, [1897] 2 I. R. 236.
Considered. *REX (WALSH) v. TIPPERARY JJ.* Div. Ct. [1917] 2 I. R. 250
- Reg. v. Local Government Board*, (1878) 2 L. R. Ir. 316.
Overruled. *REX v. LOC. GOVT. BD. (Ir.)* C. A. (Ir.) [1917] 2 I. R. 454
- Reg. v. Long* - - - (1888) 59 L. T. 33
Discussed. *GILL v. CARSON AND NIELD* Div. Ct. [1917] 2 K. B. 674
- Reg. v. Ramsay and Foote*, (1883) 15 Cox, C. C. 231; 1 Cab. & E. 126.
Approved. *BOWMAN v. SECULAR SOCIETY, LD.* - - H. L. (E.) [1917] A. C. 406
- Reg. v. Sheehan* - - [1898] 2 I. R. 682
Considered and applied. *REX v. CONSIDINE* - Div. Ct. (Ir.) [1917] 2 I. R. 1
- Reg. v. Stephenson* - - (1862) L. & C. 165
Followed. *REX v. NOAKES (JOHN)* C. C. A. [1917] 1 K. B. 581
- Reg. v. Thompson* - - [1893] 2 Q. B. 12
Followed. *REX v. COLPUS* C. C. A. 12 Cr. App. R. 193

- Reg. v. Welton* - - (1862) 9 Cox, C. C. 296
Considered. *REX v. NOAKES (JOHN)*
C. C. A. [1917] 1 K. B. 581
- Reid v. Capper* - - [1915] 2 K. B. 147
Followed. *YOUNG v. MEAD*
[1917] 2 I. R. 258
- Reischer v. Borwick* - [1894] 2 Q. B. 548
Followed. *LEYLAND SHIPPING CO. v.*
NORWICH UNION FIRE INSURANCE
SOCIETY - C. A. [1917] 1 K. B. 873
- Rex v. Caldwell* - - [1917] W. N. 85
Discussed and not followed. *FORTE*
v. M'ALISTER - Div. Ct. (Ir.)
[1917] 2 I. R. 387
- Rex v. Grimsby Appeal Tribunal*, (1917) 15
L. G. R. 173.
Commented on. *REX v. HAMPSHIRE*
APPEAL TRIBUNAL - Div. Ct.
15 L. G. R. 180
- Rex v. Halliday* - - [1916] 1 K. B. 738
Affirmed - H. L. (E) [1917] A. C. 260
- Rex v. Hawkins* - (1715) Fortescue, 272
Followed. *REX v. LEWES PRISON*
(GOVERNOR). *Ex parte DOYLE*
Div. Ct. [1917] 2 K. B. 254
- Rex v. Home Secretary, Ex parte Duke of*
Chateau Thierry, [1917] 1 K. B. 552.
Reversed - C. A. [1917] 1 K. B. 922
- Rex v. Inland Rev. Commrs.*, [1917] 2 K. B. 405
Affirmed - C. A. [1917] W. N. 364
- Rex v. Inland Rev. Commrs., Ex parte William*
France, Fenwick & Co., [1917] 2 K. B.
405.
Affirmed - - - 34 T. L. R. 118
- Rex (O'Carroll) v. King* - (1916) 50 I. L. T. R. 193
Referred to. *REX v. M'LOUGHLIN*
C. A. (Ir.) [1917] 2 I. R. 174, 230
- Rex v. Lincolnshire Tribunal of Appeal, Ex*
parte Stubbins, (1916) 14 L. G. R. 1080.
Affirmed - C. A. [1917] 1 K. B. 1
- Rex v. Local Government Board*, (1910) 44
I. L. T. R. 176.
Applied. *REX v. Loc. Govt. Bd. (Ir.)*
C. A. (Ir.) [1917] 2 I. R. 454
- Rex v. Local Government Board*, [1902] 2 I. R.
349.
Considered and applied. *REX v.*
CONSIDINE - Div. Ct. (Ir.) [1917]
2 I. R. 1
- Rex v. Lynch* - - [1903] 1 K. B. 444
Considered and applied. *REX v. COM-*
MANDING OFFICER 30TH BATTALION
MIDDLESEX REGT. - [1917] W. N. 122
- Rex v. Mahony* - - [1910] 2 I. R. 695
Considered and applied. *REX v.*
CONSIDINE - Div. Ct. (Ir.) [1917]
2 I. R. 1
- Rex v. Middlesex Regiment (30th Batt.) Com-*
manding Officer, Ex parte Freyberger,
[1917] 2 K. B. 129.
Followed. *STONE v. WOOD*
Div. Ct. [1917] 2 K. B. 885
- Rex v. Middlesex Regiment (30th Batt.) Com-*
manding Officer, Ex parte Freyberger,
Div. Ct. [1917] W. N. 103.
Affirmed - C. A. [1917] W. N. 122
- Rex v. Morn Hill Camp Commanding Officer,*
Ex parte Ferguson - [1917] 1 K. B. 176
Affirmed - C. A. [1917] 2 K. B. 129
Discussed and distinguished. *REX v.*
JONES - Div. Ct. (Ir.) [1917] 2 I. R. 7
- Rex v. Osborne* - - [1905] 1 K. B. 551
Commented on and explained. *REX*
v. NORCOTT - C. C. A. [1917] 1
K. B. 347
- Rex v. Secretary of State for Home Affairs, Ex*
parte Duke of Chateau Thierry, [1917]
1 K. B. 552.
Reversed - C. A. [1917] 1 K. B. 922
- Rex v. Southampton Income Tax Commrs., Ex*
parte W. M. Singer, [1916] 2 K. B. 249.
Affirmed on one point and reversed on
another - C. A. [1917] 1 K. B. 259
- Rex v. Taylor* - (1826) 7 Dow. & Ry. 622
Followed. *REX v. LEWES PRISON*
(GOVERNOR). *Ex parte DOYLE*
Div. Ct. [1917] 2 K. B. 254
- Rex v. Tyrone J.J.* - (1908) 42 I. L. T. R. 26
Distinguished. *REX v. CORK J.J.*
Div. Ct. (Ir.) [1917] 2 I. R. 310
- Rex v. Westminster Assessment Committee*, [1917]
W. N. 53.
Affirmed - C. A. [1917] W. N. 68
- Rhodesia Goldfields, In re* - [1910] 1 Ch. 239
Principle stated in. applied. *In re*
NATIONAL LIVE STOCK INSURANCE CO.
[1917] 1 Ch. 628
- Riggs, In re* - - [1901] 2 K. B. 16
Distinguished. *COHEN v. POPULAR*
RESTAURANTS, LD.
[1917] 1 K. B. 480
- Rio Tinto Co. v. Ertel Berber und Co.; Same v.*
Vereinigte Konigs and Laurahutte
Actien-Gesellschaft; Same v. Dynamit
Actien-Gesellschaft, (1917) 116 L. T.
471, 473.
Affirmed - C. A. 116 L. T. 810
- Rishton v. Cobb* - - (1839) 5 M. & C. 145
Distinguished. *In re BARKLIE*
[1917] 1 I. R. 1
- Rodocanachi v. Milburn* - (1886) 18 Q. B. D. 67
Distinguished. *WATTS, WATTS & CO.*
v. MITSUI & Co. -
H. L. (E.) [1917] A. C. 227
- Roe v. Roe* - - (1915) 116 L. T. 792
Not followed. *BROWN v. BROWN*
116 L. T. 702
- Rondeau, Legrand & Co. v. Marks, Louis Marks,*
Claimant, [1917] 2 K. B. 636.
Affirmed - C. A. [1917] W. N. 298
- Rutter, In re* - - [1907] 2 Ch. 592
Approved. *PLUMMER v. PLUMMER*
C. A. [1917] P. 163
- Rylands v. Fletcher* - (1868) L. R. 3 H. L. 330
Referred to. *CHEATER v. CATER*
Div. Ct. [1917] 2 K. B. 516

- Saillard, In re, Pratt v. Gamble* - [1917] 2 Ch. 140
Affirmed - C. A. [1917] 2 Ch. 401
- Sanders v. Sadler* - (1906) 5 L. G. R. 240
Distinguished and explained. *PUGH v. WILLIAMS* - Div. Ct.
15 L. G. R. 573
- Sargant & Sons v. East Asiatic Co.*, (1915) 21 Com. Cas. 344.
Not followed. *BROKEN HILL PROPRIETARY CO. v. PENINSULAR AND ORIENTAL STEAM NAVIGATION CO.*
[1917] 1 K. B. 688
- Scadding v. Lorant* - (1851) 3 H. L. C. 418
Applied. *McLAUREN v. THOMSON*
C. A. [1917] 2 Ch. 261
- Scholefield, In re* - [1905] 2 Ch. 408
Distinguished. *In re WILKINSON'S SETTLEMENT. BUTLER v. WILKINSON*
[1917] 1 Ch. 620
- Scott, In re* - [1911] 2 Ch. 374
Distinguished. *In re WILLIS. CROSSMAN v. KIRKALDY* - [1917] 1 Ch. 365
- Scott v. Scott* - [1913] A. C. 417
Followed. *REX v. LEWES PRISON (GOVERNOR). Ex parte DOYLE*
Div. Ct. [1917] 2 K. B. 254
- Scottish Navigation Co. v. W. A. Souter & Co.*,
[1916] 1 K. B. 429; [1916] 1 K. B. 675.
Reversed - C. A. [1917] 1 K. B. 222
- Sharp Brothers & Knight v. Chant*, (1916) 33 T. L. R. 68.
Reversed - C. A. [1917] 1 K. B. 771
- Shaw v. Ford* - (1877) 7 Ch. D. 669
Distinguished. *In re FOWLER*
C. A. [1917] 2 Ch. 307
- Sheldon v. Needham* - (1914) 7 B. W. C. C. 471
Not followed. *DENNIS v. WHITE (A. J.) & Co.* - H. L. (E.)
[1917] A. C. 479
- Shelley v. Shelley* - (1868) L. R. 6 Eq. 540
Followed. *In re BERESFORD-HOPE. ALDENHAM v. BERESFORD-HOPE*
[1917] 1 Ch. 287
- Shelley's Case* - (1581) 1 Rep. 93b
Referred to. *In re HOBBS. HOBBS v. HOBBS* - C. A. [1917] 1 Ch. 569
- Shepherd v. Bray* - [1906] 2 Ch. 235
Not followed on one point. *GEIPEL v. PEACH* - [1917] 2 Ch. 108
- Sidebotham v. Holland* - [1895] 1 Q. B. 378
Followed. *Observations on head-note in. MEGGESON v. GROVES*
[1917] 1 Ch. 158
- Simcoe, In re* - [1913] 1 Ch. 552
Distinguished. *In re ELTON. ELTON v. ELTON* - [1917] 2 Ch. 413
- Simmonds v. Elliott* - [1917] 2 K. B. 894
Followed. *ROBINS v. WOOD*
Div. Ct. 15 L. G. R. 820
- Simpson, In re* - [1916] 1 Ch. 502
Followed. *In re WILKINSON'S SETTLEMENT. BUTLER v. WILKINSON*
[1917] 1 Ch. 620
- Simpson (or Thom) v. Sinclair* - 1916 S. G. 85
Reversed - H. L. (Sc.) [1917] A. C. 127
- Simpson (or Thom) v. Sinclair* - [1917] A. C. 127
Applied. *FEARNLEY v. BATES & NORTHCLIFFE*
C. A. 86 L. J. (K. B.) 1000
WALES v. LAMBTON AND HETTON COLLIERIES - C. A. [1917] W. N. 250
- Skillen, In re* - [1916] 1 Ch. 518
Distinguished. *In re GLIDDON. SMITH v. GLIDDON* - [1917] 1 Ch. 174
- Slade v. Taylor* - (1915) 8 B. W. C. C. 65
Not followed. *DENNIS v. WHITE (A. J.) & Co.* - H. L. (E.)
[1917] A. C. 479
- Slingsby v. Att.-Gen.* - (1916) 32 T. L. R. 364
Affirmed - H. L. (E.) 33 T. L. R. 120
- Smith v. MacNally* - [1912] 1 Ch. 816
Referred to. *BLANCHARD v. DUNLOP*
C. A. [1917] 1 Ch. 165
- Smith v. Savage* - [1906] 1 I. R. 469
Followed. *In re CHRISTIE*
[1917] 1 I. R. 17
- Smith v. Selwyn* - [1914] 3 K. B. 98
Referred to. *ADMIRALTY COMMISSIONERS v. S.S. AMERIKA*
H. L. (E.) [1917] A. C. 38, 50
- Smith (Benjamin) & Co. v. Rex*, (1917) 33 T. L. R. 159.
Reversed - C. A. 86 L. J. (K. B.) 1147
- Société le Ferment's Application, In re*, (1912) 29 R. P. C. 497.
Distinguished. *In re WILLIAMS'S, LD., APPLICATION* - C. A. 86 L. J. (Ch.) 273
- Solicitor, A, In re* - [1895] 2 Ch. 66
Referred to. *In re N., A SOLICITOR*
[1917] W. N. 138
- Sorfareren, The* - (1915) 32 T. L. R. 108
Affirmed - J. C. 33 T. L. R. 526
- Southfield, The* - [1917] A. C. 390, n.
Approved. *THE DAKSA*
J. C. [1917] A. C. 386
- Sports and General Press Agency, Ltd. v. "Our Dogs" Publishing Co.*, [1916] 2 K. B. 880.
Affirmed - C. A. [1917] 2 K. B. 125
- Stacey v. Nelson* - (1844) 12 M. & W. 535
Followed. *NESBITT v. MARLETHORPE*
U. D. C. - 15 L. G. R. 647
- Stallard v. Marks* - (1878) 3 Q. B. D. 412
Referred to. *WALLACE v. DIXON*
Div. Ct. (Ir.) [1917] 2 I. R. 236, 249
- Stephens v. Mysore Reefs (Kangundy) Mining Co.*, [1902] 1 Ch. 745.
Discussed. *In re ANGLO-CUBAN OIL, BITUMEN, AND ASPHALT CO.*
C. A. [1917] 1 Ch. 477
- Stephenson, Blake & Co. v. Grant, Legros & Co.*,
[1917] W. N. 355.
Varied - C. A. 116 L. T. 268
- Stevens v. Boustead (E.) & Co.*, [1916] 2 K. B. 560
Affirmed - C. A. [1917] W. N. 382

- Stewart (John) & Sons* (1912), *Ld. v. Longhurst*, [1916] 2 K. B. 722.
 Affirmed *H. L. (E.)* [1917] W. N. 120
- Stock v. Inglis*, (1882) 9 Q. B. D. 708; (1884) 12 Q. B. D. 564; (1885) 10 App. Cas. 263.
 Commented upon and distinguished.
HEALY v. HOWLETT & SONS
 Div. Ct. [1917] 1 K. B. 337
- Stokes v. Holden* - - (1836) 1 Keen, 145
 Referred to. *TALBOT v. JEVERS*
 C. A. [1917] 2 Ch. 363, 367
- Stone v. Marsh* - - (1827) 6 B. & C. 551
 Referred to. *ADMIRALTY COMMISSIONERS v. S.S. AMERIKA*
H. L. (E.) [1917] A. C. 38, 48
- Stoodley, In re, Hooson v. Locock*, [1915] 2 Ch. 295.
 Applied. *PENNEFATHER v. LLOYD*
 [1917] 1 I. R. 337
- Stracey v. Nelson* - (1844) 12 M. & W. 535
 Followed. *NESBITT v. MABLETHORPE*
 U. D. C. - [1917] 2 K. B. 568
- Stringer's Estate, In re* - (1877) 6 Ch. D. 1
 Distinguished. *In re FOWLER*
 C. A. [1917] 2 Ch. 307
- Strong v. Bird*, (1874) L. R. 18 Eq. 315, 318
 Discussed. *CARTER v. HUNGERFORD*
 [1917] 1 Ch. 260
- Sturmev Motors, Ltd., In re* - [1913] 1 Ch. 16
 Applied. *In re HAYMAN, CHRISTY & LILLY, LD. CHRISTY v. THE CO.*
 [1917] 1 Ch. 545
- Suarez, In re, Suarez v. Suarez*, [1917] W. N. 312
 Affirmed - C. A. [1917] W. N. 372
- Sudeley (Lord) v. Att.-Gen.* - [1897] A. C. 21
 Explained. Dictum of Lord Davey in, followed. *VANNECK v. BENHAM*
 [1917] 1 Ch. 60
- Sugden's Trusts, In re, Sugden v. Walker*, [1917] 1 Ch. 511.
 Varied - C. A. [1917] 2 Ch. 92
- Sullivan, In re, Sullivan v. Sullivan*, [1916] 1 I. R. 248.
 Affirmed - C. A. (Ir.) [1917] 1 I. R. 38
- Sutro (L.) & Co. and Heilbut, Symons & Co., In re*, [1917] W. N. 5.
 Affirmed - C. A. [1917] 2 K. B. 348
- Sutton v. Sutton* - (1882) 22 Ch. D. 511
 Principle of, applied. *In re TURNER. KLAFTENBERGER v. GROOMBRIDGE*
 [1917] 1 Ch. 422
- Swan, The* - (1870) L. R. 3 A. & E. 314
 Followed. *THE MONTROSA*
 [1917] P. 1
- Swann v. Phillips* - (1838) 8 Ad. & E. 457
 Followed. *BANBURY v. BANK OF MONTREAL* - C. A. [1917] 1 K. B. 409
- Tamplin Steamship Co. v. Anglo-Mexican Petroleum Products Co.*, [1916] 2 A. C. 397.
 Followed. *MARSHALL v. GLANVILLE*
 Div. Ct. [1917] 2 K. B. 87
MODERN TRANSPORT CO. v. DUNERIC STEAMSHIP CO. - C. A. [1917] 1 K. B. 370
- Tarry v. Ashton* - - (1876) 1 Q. B. D. 314
 Distinguished. *PRITCHARD v. PETO*
 [1917] 2 K. B. 173
- Taylor v. Best* - - (1854) 14 C. B. 487
 Discussed. *In re SUAREZ. SUAREZ v. SUAREZ* - - [1917] 2 Ch. 131
- Taylor v. Haygarth* - - (1844) 14 Sim. 8
 Referred to. *TALBOT v. JEVERS*
 C. A. [1917] 2 Ch. 363, 369
- Tebbutt Brothers v. Smith* - [1917] W. N. 130
 Appeal allowed - C. A. [1917] W. N. 241
- Tennants (Lancashire), Ltd. v. C. S. Wilson & Co.*, [1917] 1 K. B. 208.
 Reversed - *H. L. (E.)* [1917] A. C. 495
- Thui, The* - - [1917] P. 141
 Affirmed - J. C. 33 T. L. R. 292
- Thames and Mersey Marine Insurance Co. v. Van Laun*, [1917] 2 K. B. 48, n.
 Followed. *HOOD v. WEST END MOTOR CAR PACKING CO.* - C. A. [1917] 2 K. B. 38
- Thom or Simpson v. Sinclair* - 1916 S. C. 85
 Reversed - *H. L. (Sc.)* [1917] A. C. 127
- Thom or Simpson v. Sinclair* - [1917] A. C. 127
 Applied. *FEARLEY v. BATES & NORTHCLIFFE* C. A. 86 L. J. (K. B.) 1000
MARSH v. POPE & PEARSON
 C. A. [1917] W. N. 262
- Thomas v. Hamlyn & Co.* - [1917] 1 K. B. 527
 Distinguished. *In re CONDAN. CONDAN v. STARK* - [1917] 1 Ch. 639
- Thompson's Trusts, In re* - (1856) 22 Beav. 506
 Referred to. *TALBOT v. JEVERS*
 C. A. [1917] 2 Ch. 363, 370
- Thornton v. Bright*, (1836) 2 My. & Cr. 230, 234, 253.
 Applied. *In re THORNE. THORNE v. CAMPBELL-PRESTON* - [1917] 1 Ch. 360
- Thursby v. Eccles* - (1900) 49 W. R. 281
 Approved and followed. *CHAPRONIERE v. LAMBERT* - C. A. [1917] 2 Ch. 356
- Tingley v. Muller* - - [1917] W. N. 21
 Reversed on one point
 C. A. [1917] 2 Ch. 144
- Tipperary Co-operative Creamery Society v. Hanley*, [1912] 2 I. R. 588.
 Judgment of Holmes L.J. in, commented on. *COOLMAYNE AND FETTERD CO-OPERATIVE CREAMERY, LD. v. BULFIN* - C. A. (Ir.) [1917] 2 I. R. 107
- Toplis v. Grane* - (1839) 5 Bing. N. C. 636
 Considered. *CORY v. LAMETON AND HETTON COLLIERIES*
 C. A. 115 L. T. 738
- Toronto and York Radial Ry. v. Toronto Corporation*, (1913) 23 Ont. W. R. 315.
 Distinguished. *TORONTO AND YORK RADIAL RY. v. TORONTO CORPORATION*
 J. C. 86 L. J. (P. C.) 119
- Towler v. Sutton* - (1916) 14 L. G. R. 1154
 Applied. *BLAKE v. DUNGOOR*
 Div. Ct. 15 L. G. R. 843

- Tozer v. Viola*, 117 L. T. 17; [1917] W. N. 244
 Reversed - C. A. [1917] W. N. 342
 Appeal allowed - [1917] W. N. 342
- Trebeck v. Croudace* - - - 33 T. L. R. 298
 Affirmed - C. A. [1917] W. N. 340
- Tress v. Tress* - - - (1887) 12 P. D. 128
 Followed. *PHILLIPS v. PHILLIPS*
 [1917] P. 90
- Trevanion, In re* - - - [1910] 2 Ch. 538
 Applied. *In re FOWLER* - C. A.
 [1917] 2 Ch. 307
- Union Insurance Society of Canton v. George Wills & Co.*, [1916] 1 A. C. 281, 286, 288.
 Observations in, explained. *YORKSHIRE INSURANCE CO. v. CAMPBELL*
 J. C. [1917] A. C. 218
- Vanderplank v. King* - - - (1843) 3 Hare, 1
 Referred to. *In re HOBBS*. *HOBBS v. HOBBS* - C. A. [1917] 1 Ch. 569
- Vanneck v. Benham* - - - [1917] 1 Ch. 60
 Applied. *VILLIERS v. HOLMES*
 [1917] 1 I. R. 165
- Vauxhall Water Co. v. Hampton U. C.*, [1899] 1 Q. B. 273.
 Distinguished. *RIDOUT v. COPE*
 Div. Ct. [1917] 2 K. B. 706, 715
- Vernon, In re, Garland v. Shaw*, (1906) 95 L. T. 48.
 Approved and followed. *In re COOPER*.
TOWNEND v. TOWNEND 86 L. J. (Ch.) 507
- Vinden v. Hughes* - - - [1905] 1 K. B. 795
 Followed and applied. *TOWN AND COUNTY ADVANCE CO. v. PROVINCIAL BANK OF IRELAND* - Div. Ct. (Ir.)
 [1917] 2 I. R. 421
- Walder v. Turner* - - - (1916) 33 T. L. R. 1
 Discussed and distinguished. *REX v. JONES* - Div. Ct. (Ir.) [1917] 2 I. R. 7
- Walker v. Denne*, (1793) 2 Ves. Jun. 170, 171, 184.
 Referred to. *TALBOT v. JEVERS*
 C. A. [1917] 2 Ch. 363, 373
- Wall v. Rederiaktiebolaget Luggude*, [1915] 3 K. B. 66.
 Approved. *WATTS, WATTS & CO. v. MITSUI & CO.* - H. L. (E.) [1917] A. C. 227
- Wall v. Wall* - - - (1847) 15 Sim. 513
 Followed and applied. *In re SAILLARD*.
PRATT v. GAMBLE - [1917] 2 Ch. 140
- Wallasey U. C. v. W. H. Walker & Co.*, (1906) 70 J. P. 199.
 Approved and followed. *PORTHCAWL U. D. C. v. BROGDEN*
 [1917] 1 Ch. 534
- Warburton v. Co-operative Wholesale Society, Ltd.*, [1916] 1 K. B. 906.
 Affirmed - C. A. [1917] 1 K. B. 663
- Ward (Thos. W.) v. Midland Ry. Co.*, [1916] W. N. 343.
 Affirmed - C. A. [1917] W. N. 123
- Ware v. Cumberlege* - - - (1855) 20 Beav. 510
 Statement of Sir J. Romilly M.R. in, applied. *In re KING*. *JACKSON v. ATT.-GEN.* - - - [1917] 2 Ch. 420
- Watts, Watts & Co. v. Mitsui & Co.*, [1916] 2 K. B. 826.
 Varied - H. L. (E.) [1917] A. C. 227
- Weare v. Brimsdown Lead Co.*, (1910) 103 L. T. 429.
 Commented upon and distinguished.
LEVY v. GOLDBILL - [1917] 2 Ch. 297
- Wellock v. Constantine* - - - (1863) 2 H. & C. 146
 Referred to. *ADMIRALTY COMMS. v. S.S. AMERIKA*
 H. L. (E.) [1917] A. C. 38, 48
- Wells v. Abrahams* - - - (1872) L. R. 7 Q. B. 554
 Referred to. *ADMIRALTY COMMS. v. S.S. AMERIKA*
 H. L. (E.) [1917] A. C. 38, 48
- Wesselenyi (Baroness) v. Jamieson*, [1917] A. C. 44.
 Applied. *In re FOWLER* - C. A.
 [1917] 2 Ch. 307
- West Norfolk Farmers' Manure Co. v. Archdale*, (1886) 16 Q. B. D. 754.
 Distinguished. *NESBITT v. MABLETHORPE U. D. C.* - [1917] 2 K. B. 568
- Western Bank of Scotland v. Addie*, (1867) L. R. 1 H. L. Sc. 145, 166.
 Dictum of Lord Cranworth in, approved. *ARMSTRONG v. JACKSON*
 [1917] 2 K. B. 822
- Western Steamship Co. v. Amaral Suñerland & Co.*, [1913] 3 K. B. 366.
 Followed. *INVERKIP STEAMSHIP CO. v. BUNGE & CO.*
 C. A. [1917] 2 K. B. 193
- Wharton, In re* - - - (1854) 5 D. M. & G. 33
 Followed. *In re' ALSTON*. *SINCLAIR v. WILLES* - - - [1917] 2 Ch. 226
 Referred to. *TALBOT v. JEVERS*
 C. A. [1917] 2 Ch. 363, 371
- White v. Avery* - - - - - 1916 S. C. 209
 Followed. *DENNIS v. WHITE (A. J.) & Co.* - H. L. (E.) [1917] A. C. 479
- White v. Spettigue* - - - (1845) 13 M. & W. 603
 Referred to. *ADMIRALTY COMMS. v. S.S. AMERIKA*
 H. L. (E.) [1917] A. C. 38, 48
- Wilding v. Sanderson* - - - [1897] 2 Ch. 534
 Followed. *FARADAY v. TAMWORTH UNION* - - - 86 L. J. (Ch.) 436
- Williams, In re*, [1914] 1 Ch. 219; [1914] 2 Ch. 61.
 Distinguished. *In re BROWN*. *LEEDS v. SPENCER* - - - [1917] 2 Ch. 232
- Williams, In re, Williams v. Ball*, (1916) 115 L. T. 186; [1916] W. N. 250.
 Affirmed - C. A. [1917] 1 Ch. 1
- Williams v. Moss' Empires, Ltd.*, [1915] 3 K. B. 242.
 Dictum of Sankey J. in, overruled.
MORRIS v. BARON & Co.
 H. L. (E.) [1917] W. N. 297

- Williams's, Ltd., Application, In re*, (1916) 34 R. P. C. 1.
 Reversed - C. A. 86 L. J. (Ch.) 273
- Wills v. Great Western Ry. Co.*, [1915] 1 K. B. 199.
 Reversed - H. L. (E.) [1917] A. C. 148
- Wilson v. Harper* - - - [1908] 2 Ch. 370
 Distinguished. *MARSHALL v. GLANVILL* - - Div. Ct. [1917] 2 K. B. 87
- Wilson & Co. v. Tennants (Lancashire), Ltd.*, [1917] 1 K. B. 208.
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- Zamora, The* - - - [1916] 2 A. C. 77
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STATUTES.

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Chap.	TITLE.	Date of Royal Assent.	When Act to come into Operation.
1	<i>Consolidated Fund (No. 1) Act, 1917</i> . . .	February 28 .	Not specified.
2	<i>Census of Production Act, 1917</i> . . .	March 28 .	Not specified.
3	<i>Railway Passenger Duty Act, 1917</i> . . .	March 28 .	Not specified.
4	<i>Grand Juries (Suspension) Act, 1917</i> . . .	March 28 .	April 2, 1917.
5	<i>Ecclesiastical Services (Omission on Account of War) Act, 1917</i>	March 28 .	Not specified.
6	<i>Ministry of National Service Act, 1917</i> . . .	March 28 .	Not specified.
7	<i>Consolidated Fund (No. 2) Act, 1917</i> . . .	March 28 .	Not specified.
8	<i>Coal Mines Regulation (Amendment) Act, 1917</i>	March 28 .	Not specified.
9	<i>Army (Annual) Act, 1917</i>	April 5 .	Within the United Kingdom April 30, 1917. Elsewhere July 31, 1917.
10	<i>Army (Annual) Act (1916) Amendment Act, 1917</i>	April 5 .	Not specified.
11	<i>Naval Discipline (Delegation of Powers) Act, 1917</i>	April 5 .	Not specified.
12	<i>Military Service (Review of Exceptions) Act, 1917</i>	April 5 .	Not specified.
13	<i>Parliament and Local Elections Act, 1917</i> . .	April 26 .	Not specified.

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14	<i>Naval and Military War Pensions, &c. (Administrative Expenses) Act, 1917</i> . . .	May 17 .	Not specified.
15	<i>National Insurance (Part I. Amendment) Act, 1917</i>	May 17 .	Not specified.
16	<i>Societies (Suspension of Meetings) Act, 1917</i> .	May 17 .	Not specified.

NOTE.—An Act comes into operation from the commencement of the day on which it receives the Royal Assent unless otherwise specified, except where there are conflicting rights between subject and subject, for the determination of which it is necessary to ascertain the actual priority: *Tomlinson v. Bullock* (1879) 4 Q. B. D. 230.

Where an Act is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day: Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 36 (2).

Chap.	TITLE.	Date of Royal Assent.	When Act to come into Operation.
17	<i>Consolidated Fund (No. 3) Act, 1917</i> . . .	May 17 . . .	Not specified.
18	<i>Companies (Foreign Interests) Act, 1917</i> . . .	May 24 . . .	Not specified.
19	<i>Coroners (Emergency Provisions) Act, 1917</i> . . .	May 24 . . .	Not specified.
20	<i>Billeting of Civilians Act, 1917</i> . . .	May 24 . . .	Not specified.
21	<i>Veneral Disease Act, 1917</i> . . .	May 24 . . .	Not specified.
22	<i>Royal Naval Volunteer Reserve Act, 1917</i> . . .	July 10 . . .	Not specified.
23	<i>Gaming Machines (Scotland) Act, 1917</i> . . .	July 10 . . .	Not specified. Applies to Scotland only.
24	<i>Trade Union (Amalgamation) Act, 1917</i> . . .	July 10 . . .	Not specified.
25	<i>Courts (Emergency Powers) Act, 1917</i> . . .	July 10 . . .	Not specified.
26	<i>Military Service (Conventions with Allied States) Act, 1917</i> . . .	July 10 . . .	Not specified.
27	<i>Confirmation of Executors (War Service) (Scotland) Act, 1917</i> . . .	August 2 . . .	Not specified.
28	<i>Companies (Particulars as to Directors) Act, 1917</i> . . .	August 2 . . .	Not specified.
29	<i>Wesleyan Methodists (Appointments during the War) Act, 1917</i> . . .	August 2 . . .	Not specified.
30	<i>Local Government (Allotment and Land Cultivation) (Ireland) Act, 1917</i> . . .	August 2 . . .	Not specified.
31	<i>Finance Act, 1917</i> . . .	August 2 . . .	Not specified.
32	<i>Public Works Loans Act, 1917</i> . . .	August 2 . . .	Not specified.
33	<i>Consolidated Fund (No. 4) Act, 1917</i> . . .	August 2 . . .	Not specified.
34	<i>Naval Discipline Act, 1917</i> . . .	August 2 . . .	Not specified.
35	<i>Isle of Man (Customs) Act, 1917</i> . . .	August 21 . . .	Not specified.
36	<i>Police Constables (Naval and Military Service) Act, 1917</i> . . .	August 21 . . .	Not specified.
37	<i>Naval and Military War Pensions, &c. (Transfer of Powers) Act, 1917</i> . . .	August 21 . . .	Not specified.
38	<i>Expiring Laws Continuance Act, 1917</i> . . .	August 21 . . .	Not specified.
39	<i>Fishery Harbours (Continuance of Powers) Act, 1917</i> . . .	August 21 . . .	Not specified.
40	<i>Public Health (Prevention and Treatment) (Ireland) Act, 1917</i> . . .	August 21 . . .	Not specified.
41	<i>War Loan Act, 1917</i> . . .	August 21 . . .	Not specified.
42	<i>Workmen's Compensation (War Addition) Act, 1917</i> . . .	August 21 . . .	September 1, 1917.
43	<i>Solicitors (Examination) Act, 1917</i> . . .	August 21 . . .	Not specified.
44	<i>New Ministries Act, 1917</i> . . .	August 21 . . .	Not specified.
45	<i>Munitions of War Act, 1917</i> . . .	August 21 . . .	Not specified.
46	<i>Corn Production Act, 1917</i> . . .	August 21 . . .	Not specified.
47	<i>Titles Deprivation Act, 1917</i> . . .	November 8 . . .	Not specified.
48	<i>Bills of Exchange (Time of Noting) Act, 1917</i> . . .	November 8 . . .	Not specified.
49	<i>Consolidated Fund (No. 5) Act, 1917</i> . . .	November 8 . . .	Not specified.
50	<i>Parliament and Local Elections (No. 2) Act, 1917</i> . . .	November 29 . . .	Not specified.
51	<i>Air Force (Constitution) Act, 1917</i> . . .	November 29 . . .	Not specified.
52	<i>Appropriation Act, 1917</i> . . .	December 20 . . .	Not specified.

Chap.	TITLE.	Date of Royal Assent	When Act to come into Operation.
53	<i>Education (Provision of Meals) (Ireland) Act, 1917</i>	December 20 .	Not specified.
54	<i>Naval and Military War Pensions, &c. (Committees), Act, 1917</i>	December 20 .	Not specified.
55	<i>Chequers Estate Act, 1917</i>	December 20 .	Not specified.

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12 Car. 2, c. 24 (*Wards*), s. 8. *In re* TOLLE- MACHE - - - 116 L. T. 762
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— s. 42. REX v. ARMY COUNCIL. *Ex parte* RAVENSCROFT
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— s. 70. REX v. COLEPS AND BOORMAN. REX v. WHITE
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— s. 80, sub-s. 4 (b). BOOTS v. ELVY
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— s. 154. REX v. JONES
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— s. 190, sub-ss. 31, 35. FLINT v. ATT.-GEN. - - - [1917] W. N. 354

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— Appendix III, Form A. REX v. LEWES PRISON (GOVERNOR). *Ex parte* DOYLE - Div. Ct. [1917] 2 K. B. 254

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45 & 46 Vict. c. 38 (*Settled Land*), s. 2, sub-ss. 1, 5. *In re* MONCKTON'S SETTLEMENT. MONCKTON v. CALDER [1917] 1 Ch. 224

— s. 2, sub-ss. 5, 6; s. 58, sub-s. 1; s. 62. *In re* D. - [1917] 1 I. R. 344

— ss. 25, 26, 38, 65. *In re* CHARTERIS. CHARTERIS v. KENYON [1917] 2 Ch. 257

45 & 46 Vict. c. 48 (*Reserve Forces*). REX v. JONES - Div. Ct. (Ir.) [1917] 2 I. R. 7

— s. 15. GERHOLD v. DAY
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45 & 46 Vict. c. 61 (*Bills of Exchange*), s. 7, sub-s. 3. TOWN AND COUNTY ADVANCE CO. v. PROVINCIAL BANK OF IRELAND Div. Ct. (Ir.) [1917] 2 I. R. 421

— s. 9, sub-s. 2; s. 20. MACMILLAN v. LONDON JOINT STOCK BANK, LD.
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45 & 46 Vict. c. 75 (*Married Women's Property*), s. 12. HULTON v. HULTON
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— s. 17. *In re* MARRIED WOMEN'S
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TIONS BETWEEN W. A. HUMPHERY AND
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46 & 47 Vict. c. 52 (*Bankruptcy*), s. 4, sub-s. 1
(g); s. 5; s. 6, sub-s. 1; s. 109. *In re*
A DEBTOR. *Ex parte* THE PETITIONING
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1884.

47 & 48 Vict. c. 68 (*Matrimonial Causes*), s. 7.
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1885.

49 & 49 Vict. c. 54 (*Pluralities*). RICE v.
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1887.

50 & 51 Vict. c. 57 (*Deeds of Arrangements*).
ss. 4, 5. *In re* HALSTED. *Ex parte*
RICHARDSON - C. A. [1917] 1 K. B. 695

1888.

51 & 52 Vict. c. 25 (*Railway and Canal Traffic*).
s. 10. WARD (THOS.) LD. v. MIDLAND
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51 & 52 Vict. c. 43 (*County Courts*), ss. 66, 113,
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51 & 52 Vict. c. 46 (*Oaths*), s. 1. TOWLER v.
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52 & 53 Vict. c. 45 (*Factors*), s. 2, sub-s. 2.
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— s. 14. *In re* MARRIED WOMEN'S
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53 & 54 Vict. c. 5 (*Lunacy*), s. 123. *In re*
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53 & 54 Vict. c. 39 (*Partnership*), s. 20,
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53 & 54 Vict. c. 59 (*Public Health*), s. 43.
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53 & 54 Vict. c. 69 (*Settled Land*), s. 13. *In re*
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1891.

54 & 55 Vict. c. 39 (*Stamp*), s. 17. *In re*
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1892.

55 & 56 Vict. c. 19 (*Statute Law Revision*).
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55 & 56 Vict. c. 57 (*Private Street Works*),
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— s. 1. WEBSTER v. BAKEWELL
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tion*). HAYES v. KING'S CO. C. C.
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56 & 57 Vict. c. 39 (*Industrial and Provident
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— s. 49. McELISTRIM v. BALLY-
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56 & 57 Vict. c. 53 (*Trustee*), ss. 23, 41, 47, 52.
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56 & 57 Vict. c. 61 (*Public Authorities Protec-
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57 & 58 Vict. c. 30 (*Finance*), ss. 1, 2,
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— s. 5, sub-s. 1. *In re* D'OYLY.
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— s. 9, sub-s. 1. *In re* HICKLIN.
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— s. 90. *In re* SMYTH. EDWARDS v.
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57 & 58 Vict. c. 60 (*Merchant Shipping*), s. 221.
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— s. 518. DOWLING v. GRIFFIN
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— s. 742. SHELFORD v. MOSEY
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63 & 64 Vict. c. 51 (*Money-lenders*), s. 1. *In re*
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63 & 64 Vict. c. 53 (*Elementary Education*),
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1 Edw. 7, c. 7 (*Finance*), s. 10. COEN PRO-
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1903.

3 Edw. 7, c. 36 (*Motor Car*), s. 20. ELIESON
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1905.

5 Edw. 7, c. 15 (*Trade Marks*), ss. 3, 9,
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— s. 9, sub-s. 5. *In re* BRITISH
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- 6 Edw. 7, c. 41 (*Marine Insurance*), ss. 13, 22. ASSOCIATED OIL CARRIERS, LD.
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- 6 Edw. 7, c. 48 (*Merchant Shipping*), s. 28.
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- 6 Edw. 7, c. 55 (*Public Trustee*), s. 9, sub-
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- 6 Edw. 7, c. 58 (*Workmen's Compensation*),
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- 6 Edw. 7, c. 58 (*Workmen's Compensation*),
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- s. 1, sub-s. 3. RENSCHALL v.
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- s. 2. SELKIRK v. NATIONAL
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- Sched. I., pars. 3, 16. TARR v.
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- 6 Edw. 7, c. 58 (*Workmen's Compensation*),
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- Sched. I, pars. 5, 8, 9. FLEMING
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1907.

- 7 Edw. 7, c. 12 (*Matrimonial Causes*), s. 3.
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- 7 Edw. 7, c. 23 (*Criminal Appeal*), s. 4, sub-s. 1.
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- 7 Edw. 7, c. 29 (*Patents and Designs*), s. 18.
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- 7 Edw. 7, c. 53 (*Public Health*), s. 23.
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- 8 Edw. 7, c. 28 (*Agricultural Holdings*), s. 26.
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- Sched. II, rr. 14, 15. GRAY v.
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- s. 2; s. 24, sub-s. 2. MORSE v.
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- 8 Edw. 7, c. 32 (*Friendly Societies*), s. 6.
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- 8 Edw. 7, c. 41 (*Assizes and Quarter Sessions*),
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- 8 Edw. 7, c. 53 (*Law of Distress Amendment*),
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- 8 Edw. 7, c. 59 (*Prevention of Crime*), s. 10,
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- 8 Edw. 7, c. 67 (*Children*), s. 57. REX v.
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- s. 102, sub-s. 3. REX v. FOSTER
(FREDERICK)
C. C. A. 12 Cr. App. R. 164
- 8 Edw. 7, c. 69 (*Companies (Consolidation)*),
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- s. 9. *In re* ATLANTIC PATENT
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- In re* COPAL VARNISH CO.
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- In re* INDO-CHINA STEAM NAVIGATION
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- ss. 41 (d), 45, 46 (a), 120. *In re*
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- s. 84, sub-s. 1. GEIPEL v. PEACH
[1917] 2 Ch. 108
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- s. 120. *In re* COMMONWEALTH OIL
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- In re* GUARDIAN ASSURANCE CO.
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- s. 129, sub-s. 6. *In re* NEWBRIDGE
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LILLY, LD. CHRISTY v. THE CO.
[1917] 1 Ch. 283; [1917] W. N. 26

1909.

- 9 Edw. 7, c. 30 (*Cinematograph*). McVITTIE
v. MARSDEN - C. A. 86 L. J. (K. B.) 653
- 9 Edw. 7, c. 44 (*Housing, Town Planning, &c.*),
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- 9 Edw. 7, c. 49 (*Assurance Companies*), s. 2,
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- 9 Edw. 7, c. 49 (*Assurance Companies*), s. 36,
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- 10 Edw. 7, c. 8 (*Finance* (1909-10)), ss. 1,
2, 4, 26, 27, 41. ATT.-GEN. (IR.) v.
ADAMS - C. A. (Ir.) [1917] 2 I. R. 268
- s. 16. FERGUSON v. INLAND REV.
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- s. 20. ATT.-GEN. v. SALT UNION
LD. - [1917] 2 K. B. 488
- s. 61, sub-s. 5. *In re* SMYTH.
EDWARDS v. SMYTH - [1917] 2 Ch. 331
- ss. 66, 72. BROOKER v. INLAND REV.
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- s. 84, sub-ss. 7, 8. LLANDUDNO
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86 L. J. (K. B.) 866
- 10 Edw. 7 & 1 Geo. 5, c. 24 (*Licensing* (*Con-
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- s. 61. HARRIES v. THOMAS
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- 1 & 2 Geo. 5, c. 6 (*Perjury*), s. 1. REX v.
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- ss. 3, 17. PLUMMER v. PLUMMER
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- 1 & 2 Geo. 5, c. 37 (*Conveyancing*), s. 9. *In re*
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- 1 & 2 Geo. 5, c. 46 (*Copyright*), ss. 1, 35.
D. P. ANDERSON & CO. v. THE LIEBER
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- 1 & 2 Geo. 5, c. 50 (*Coal Mines*), ss. 35, 75, 101,
103. JONES v. LEWIS
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- s. 86. MAYDEW v. CHATTERLEY-
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- 2 Geo. 5, c. 13 (*Shops*), s. 19, sub-s. 1. WAL-
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- 2 & 3 Geo. 5, c. 8 (*Finance*), s. 9. *In re* SMYTH.
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- 2 & 3 Geo. 5, c. 20 (*Criminal Law Amendment*),
s. 7, sub-s. 2. REX v. DICKINSON.
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- 2 & 3 Geo. 5, c. 31 (*Pilotage*), ss. 10, 11, 59,
and 60. THE STRANTON [1917] P. 177
- 3 & 4 Geo. 5, c. 34 (*Deeds of Arrangement*),
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- ss. 37, 42. *In re* HALSTED. *Ec
parte* RICHARDSON
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- 4 & 5 Geo. 5, c. 10 (*Finance*), s. 14. *In re*
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- In re* EVE. HALL v. EVE
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- In re* PARKER. WHITE v. STEWART
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- In re* TINELER. LOYD v. ADEN
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- 4 & 5 Geo. 5, c. 12 (*Aliens Registration*), s. 1.
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15 L. G. R. 620
- s. 1, sub-s. 1. REX v. SECRETARY
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- 4 & 5 Geo. 5, c. 17 (*British Nationality and
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86 L. J. (K. B.) 534
- s. 14, sub-s. 1. VROCHT v. TAYLOR
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- 4 & 5 Geo. 5, c. 27 (*Patents, Designs and
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- 4 & 5 Geo. 5, c. 47 (*Deeds of Arrangement*),
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- 4 & 5 Geo. 5, c. 58 (*Criminal Justice Administra-
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- s. 48, sub-s. 11. REX v. BULLIS JJ.
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- 4 & 5 Geo. 5, c. 59 (*Bankruptcy*), s. 5 sub-s. 4.
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C. A. [1917] 2 Ch. 115
- Sched. I, clause 10. *In re* PAWSON
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- ss. 18, 38, 47; s. 45, sub-s. 5;
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- s. 25, sub-s. 1; s. 168, sub-s. 1.
In re A DEBTOR (No. 3 of 1909).
Ex parte GOLDSTEIN - Div. Ct.
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- s. 42, sub-s. 2. *In re* BULTELL'S
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[1917] 1 Ch. 251
- s. 149. *In re* A DEBTOR (No. 28 of
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- 4 & 5 Geo. 5, c. 73 (*Patents, Designs and Trade Marks Temporary Rules (Amendment)*), s. 1. BRITISH ASSOCIATION OF GLASS BOTTLE MANUFACTURERS v. FORSTER & SONS - C. A. 86 L. J. (Ch.) 489
- 4 & 5 Geo. 5, c. 78 (*Courts (Emergency Powers)*), NATIONAL BANK, LD. v. CLAFFEY [1917] 2 I. R. 281
- s. 1. *In re* A DEBTOR'S SUMMONS C. A. [1917] 2 I. R. 417
- In re* MORRIS. DE FONBLANQUE v. HALL - [1917] W. N. 300
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- s. 1, sub-s. 1 (a). *In re* A DEBTOR'S SUMMONS C. A. (Ir.) [1917] 2 I. R. 417
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- s. 1, sub-s. 1 (b). HOSACK v. ROBINS - C. A. [1917] 1 Ch. 332
- In re* PROVIDENT ASSOCIATION OF LONDON AND GOLLOGLY'S CONTRACT [1917] 1 I. R. 240
- s. 1, sub-s. 3. *In re* A DEBTOR (No. 224 of 1916) C. A. [1916] H. B. R. 156
- 4 & 5 Geo. 5, c. 87 (*Trading with the Enemy*). TINGLEY v. MÜLLER C. A. [1917] 2 Ch. 144
- s. 1, sub-s. 2. SELIGMAN v. EAGLE INSURANCE CO. - [1917] 1 Ch. 519
- s. 3. *In re* ARAMAYO FRANCKE MINES, LD. - C. A. [1917] 1 Ch. 451
- 5 Geo. 5, c. 8 (*Defence of the Realm (Consolidation)*). LIPTON'S v. FORD [1917] 2 K. B. 647
- s. 1, sub-s. 4. REX v. LEWES PRISON (GOVERNOR). *Ex parte* DOYLE - Div. Ct. [1917] 2 K. B. 254
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- 5 Geo. 5, c. 12 (*Trading with the Enemy (Amendment)*), s. 2; s. 6, sub-s. 1; s. 10. SELIGMAN v. EAGLE INSURANCE CO. [1917] 1 Ch. 519
- s. 10. TINGLEY v. MÜLLER C. A. [1917] 2 Ch. 144
- s. 11, sub-s. 1. *In re* ARAMAYO FRANCKE MINES, LD. C. A. [1917] 1 Ch. 451

1915.

- 5 Geo. 5, c. 34 (*Defence of the Realm (Amendment)*), s. 1, sub-s. 1, 7. REX v. LEWES PRISON (GOVERNOR). *Ex parte* DOYLE - Div. Ct. [1917] 2 K. B. 254

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- 5 Geo. 5, c. 36 (*Legal Proceedings against Enemies*). HUGH STEVENSON & SONS, LD. v. AKTIENGESELLSCHAFT FÜR CARTONNAGEN-INDUSTRIE C. A. [1917] 1 K. B. 842
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- 5 & 6 Geo. 5, c. 37 (*Defence of the Realm (Amendment) (No. 2)*). LIPTON'S v. FORD - [1917] 2 K. B. 647
- 5 & 6 Geo. 5, c. 42 (*Defence of the Realm (Amendment) (No. 3)*), s. 1. CANNON BREWERY CO. v. CENTRAL CONTROL BOARD (LIQUOR TRAFFIC) 33 T. L. R. 567
- 5 & 6 Geo. 5, c. 54 (*Munitions of War*), Part II. WILLIAM HOLLINS & CO. v. PAGET [1917] 1 Ch. 187
- s. 32. REX v. SOUTHAMPTON INCOME TAX COMMS. *Ex parte* SINGER C. A. [1917] 1 K. B. 259
- 5 & 6 Geo. 5, c. 83 (*Naval and Military War Pensions*), s. 5. HIGGON v. EVANS Div. Ct. [1917] W. N. 268
- 5 & 6 Geo. 5, c. 89 (*Finance (No. 2)*), s. 32. REX v. KENSINGTON INCOME TAX COMMS. - C. A. [1917] 1 K. B. 486
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- ss. 38, 39, 40; Sched. IV., Part I., clause 5. THOMPSON BROTHERS & CO. v. AMIS - [1917] 2 Ch. 211
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- Sched. IV., Part III., s. 10. *In re* CAVAN CO-OPERATIVE SOCIETY Div. Ct. (Ir.) [1917] 2 I. R. 594
- Part III. THOMAS v. HAMLYN & CO. - [1917] 1 K. B. 527
- Sched. IV., Part I., par. 5. REX v. INLAND REV. COMMS. C. A. [1917] W. N. 364
- 5 & 6 Geo. 5, c. 97 (*Increase of Rent and Mortgage Interest (War Restrictions)*), s. 1, sub-s. 1 (ii.) and (vi.). WORTLEY v. MANN - Div. Ct. [1916] W. N. 390
- s. 1, sub-s. 1 (b). *In re* PROVIDENT ASSOCIATION OF LONDON AND GOLLOGLY'S CONTRACT - [1917] 1 I. R. 240
- s. 1, sub-ss. 1, 2; s. 2, sub-ss. 1, 2 (c). SHARP BROTHERS & KNIGHT v. CHANT - C. A. [1917] 1 K. B. 771

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5 & 6 Geo. 5, c. 97 (*Increase of Rent and Mortgage Interest (War Restrictions)*), s. 1, sub-s. 4. *WALTERS v. WHITE* [1917] W. N. 14

— s. 1, sub-s. 4; s. 2, sub-s. 4 (l). LONDON COUNTY AND WESTMINSTER BANK v. TOMPKINS - [1917] W. N. 228

— s. 2, sub-s. 4. *JONES v. WOODWARD* [1917] W. N. 61

1916.

5 & 6 Geo. 5, c. 104 (*Military Service*). *REX v. YORKSHIRE (N. RIDING) APPEAL TRIBUNAL* - Div. Ct. 86 L. J. (K. B.) 599

— s. 1. *FRASER v. MILITARY AUTHORITIES* - Div. Ct. 86 L. J. (K. B.) 953
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— s. 1, sub-s. 2. *REX v. COMMANDING OFFICER OF MOON HILL CAMP, WINCHESTER. Ex parte FERGUSON* - Div. Ct. [1917] 1 K. B. 176

— s. 1, sub-s. 2 (a): Sched. I, par. 6. *Ex parte BURNS*
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— s. 2. *REX v. WESTMINSTER LOCAL TRIBUNAL. Ex parte SMART*
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— s. 2, sub-s. 2. *REX v. LEICESTERSHIRE APPEAL TRIBUNAL. Ex parte TIVEY* - Div. Ct. 86 L. J. (K. B.) 807

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5 & 6 Geo. 5, c. 104 (*Military Service*). Sched. II. *REX v. LINCOLNSHIRE APPEAL TRIBUNAL. Ex parte STUBBINS* - C. A. [1917] 1 K. B. 1
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5 & 6 Geo. 5, c. 105 (*Trading with the Enemy*), s. 1, sub-s. 2. *CONTINHO CASE & CO. v. VERMONT & CO.* [1917] 2 K. B. 587

— s. 1, sub-ss. 1, 2, 3, 4, and 7. *In re KASTNER & CO. AUTO-PILOT*
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— s. 1, sub-ss. 2, 3. *In re TH. GOLD-SCHMIDT, LD.* - [1917] 2 Ch. 194

— s. 1, sub-s. 3. *In re FR. MEYERS SOHN, LD.* - [1917] 2 Ch. 291

— s. 4. *TINGLEY v. MÜLLER*
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6 & 7 Geo. 5, c. 12 (*Local Government*), s. 1. *SHIFTON v. CARDIFF CORPORATION*
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6 & 7 Geo. 5, c. 13 (*Courts (Emergency Powers) (Amendment)*), s. 1. *In re MORRIS, DE FONBLANQUE & HALL*
 [1917] W. N. 339

— s. 2. *TOZER v. VIOLA*
 [1917] W. N. 342

6 & 7 Geo. 5, c. 15 (Sess. 2) (*Military Service*), s. 1. *FRASER v. MILITARY AUTHORITIES* - Div. Ct. 86 L. J. (K. B.) 953

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— s. 1, sub-s. 1. *OFFORD v. HISCOCK*
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— s. 1, sub-s. 1; ss. 6, 17. *RIDOUT v. COPE* - Div. Ct. 15 L. G. R. 635

— s. 1, sub-ss. 1, 2. *MARSHALL v. GLANVILLE* Div. Ct. [1917] 2 K. B. 87

— s. 1; s. 3, sub-s. 1; s. 17, sub-s. 2. *REX v. GOVERNOR OF WORRESDALE SCRIBBS PRISON. Ex parte RILEY*
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— s. 3, sub-s. 2. *Ex parte BURNS*
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6 & 7 Geo. 5, c. 18 (*Courts (Emergency Powers) (No. 2)*), s. 1. *In re MORRIS, DE FONBLANQUE & HALL* - [1917] W. N. 300

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- 6 & 7 Geo. 5, c. 18 (*Courts (Emergency Powers)* (No. 2)), s. 1, sub-s. 1 (b). *HOSACK v. ROBINS* - C. A. [1917] 1 Ch. 332
 — s. 3. *In re CITY OF LONDON REAL PROPERTY CO.* - [1917] W. N. 183
 6 & 7 Geo. 5, c. 24 (*Finance*), Part III. *THOMAS v. HAMLYN & CO.* [1917] 1 K. B. 527
 — ss. 45, 48, 49. *WILLIAM HOLLINS & CO. v. PAGET* - [1917] 1 Ch. 187
 — s. 49. *THOMPSON BROTHERS & CO. v. AMIS* - [1917] 2 Ch. 211
 6 & 7 Geo. 5, c. 26 (*Output of Beer*), s. 5, sub-s. 1. *FISHER v. RAWSON & CO.* 86 L. J. (Ch.) 519; [1917] W. N. 112

1917.

- 7 & 8 Geo. 5, c. 25 (*Courts (Emergency Powers)*), s. 6. *TORRES v. TORRES* [1917] W. N. 263
 — s. 8. *In re MORRIS. DE FON-BLANQUE v. HALL* - [1917] W. N. 300

II. LOCAL AND PERSONAL.

1774.

- 14 Geo. 3, c. lxxviii. (*Fires Prevention (Metropolis)*), s. 86. *SHAW & CO. v. SYMMONS & SONS* - [1917] 1 K. B. 799

1891.

- 54 & 55 Vict. c. ccxix. (*Midland Railway (Rates and Charges)*). *MIDLAND RY. CO. v. WARNER, SONS & CO.* C. A. 116 L. T. 662

- 54 & 55 Vict. c. ccxxi. (*London and North Western Railway (Rates and Charges)*). *LITTLETON COLLIERIES, LD. v. LONDON AND NORTH WESTERN RAILWAY RY. & CAN. CO.* 115 L. T. 840

- 54 & 55 Vict. c. ccxxii. (*Great Western Railway Company (Rates and Charges)*), Schedule, Part I., clause 5, sub-clause (iv.); Part IV. *GREAT WESTERN RY. v. DAFEN TINPLATE CO.* - [1917] 2 K. B. 177

1894.

- 57 & 58 Vict. c. ccxiii. (*London Building*). *SELBY v. WHITBREAD & CO.* [1917] 1 K. B. 736
 — ss. 22, 24, 25, 183. *LONDON C. C. v. GALSWORTHY* - C. A. [1917] 1 K. B. 902

- ss. 145, 209. *GODDARD v. GREIG* Div. Ct. [1917] 2 K. B. 397

1900.

- 63 & 64 Vict. c. clxxxiii. (*Local Government Board's Provisional Orders Confirmation* (No. 14)). *GLOUCESTER UNION v. WOOLWICH UNION* - Div. Ct. [1917] 2 K. B. 374

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1901.

- 1 Edw. 7, c. ccl. (*Ilkeston and Heanor Water*), ss. 80, 83. *BARRETT v. ILKESTON CORPORATION* - [1917] 1 K. B. 827

1905.

- 5 Edw. 7, c. ccix. (*London Building Acts (Amendment)*), s. 20. *MONRO v. LORD BURGHCLERE* - Div. Ct. [1917] W. N. 387

1906.

- 6 Edw. 7, c. clvii. (*Cardiff Railway*), ss. 2, 3, 4, 13, 14, 15. *TAFF VALE RY. v. CARDIFF RY.* - C. A. [1917] 1 Ch. 299

1910.

- 10 Edw. 7 & 1 Geo. 5, c. cxxix. (*London County Council (General Powers)*), s. 22, sub-s. 1. *LONDON (CITY) CORPORATION v. WOLFF* Div. Ct. 86 L. J. (K. B.) 534
 — s. 22, sub-s. 5. *EDELSTEIN v. LONDON C. C.* - [1917] W. N. 312

1913.

- 3 & 4 Geo. 5, c. cxxix. (*East Lancashire Sea Defence*). *B. AERODROME, LD. v. DELL* Div. Ct. [1917] 2 K. B. 380

1915.

- 5 & 6 Geo. 5, c. ciii. (*London County Council (General Powers)*), s. 23. *DALE v. LONDON C. C.* Div. Ct. [1917] 1 K. B. 808

III. STATUTES (IRELAND).

1787.

- 27 Geo. 3, c. 35 (*Game*), s. 10. *REX (WALSH) v. TIPPERARY JJ.* - Div. Ct. (Ir.) [1917] 2 I. R. 250

1833.

- 3 & 4 Will. 4, c. 68 (*Licensing*), s. 1. *REX (MOORE) v. ANTRIM JJ.* Div. Ct. (Ir.) [1917] 2 I. R. 347

1837.

- 7 Will. 4 & 1 Vict. c. 25 (*Dublin Police*), s. 27. *REX v. DUBLIN JJ.* Div. Ct. (Ir.) [1917] 2 I. R. 45

1838.

- 1 & 2 Vict. c. 56 (*Poor Relief*). *HEWSON v. GREENE* - [1917] 1 I. R. 123
 — s. 65. *NORTH DUBLIN R. D. C. v. WALSH* Div. Ct. (Ir.) [1917] 2 I. R. 86

1843.

- 6 & 7 Vict. c. 92 (*Poor Relief*), s. 10. *NORTH DUBLIN R. D. C. v. WALSH* Div. Ct. (Ir.) [1917] 2 I. R. 86

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1849.

- 12 & 13 Vict. c. 105 (*Renewable Leasehold Conversion*). FITZPATRICK v. WARREN
[1917] 1 I. R. 156

1850.

- 13 & 14 Vict. c. 88 (*Fisheries*), s. 50. REX v.
CORK CO. JJ. - Div. Ct.
[1917] 2 I. R. 430

1851.

- 14 & 15 Vict. c. 92 (*Summary Jurisdiction*),
s. 8. REX v. TYRONE JJ.

Div. Ct. (Ir.) [1917] 2 I. R. 96

- s. 23. REX v. DUBLIN JJ.

Div. Ct. (Ir.) [1917] 2 I. R. 45

- 14 & 15 Vict. c. 93 (*Petty Sessions*), s. 20.
REX v. LONDONDERRY JJ.

Div. Ct. (Ir.) [1917] 2 I. R. 283

- ss. 21, 42. REX (WALSH) v.

TIPPERARY JJ. - Div. Ct. (Ir.)

[1917] 2 I. R. 250

- ss. 34, 36; Sched., Form (C).
SHORE v. CUNNINGHAM

Div. Ct. (Ir.) [1917] 2 I. R. 360

1854.

- 17 & 18 Vict. c. 103 (*Towns Improvement*).
REX v. LOCAL GOVERNMENT BOARD
(Ir.) - C. A. [1917] 2 I. R. 454

1857.

- 20 & 21 Vict. c. 60 (*Bankruptcy*), s. 271. *In*
re COLEMAN - [1917] 2 I. R. 56

- s. 385. HOLLINSHEAD v. McLOUGH-
LIN - H. L. (Ir.) [1917] 2 I. R. 28

1869.

- 32 & 33 Vict. c. 42 (*Irish Church*). *In re*
TRUSTS OF MARSHAL BERESFORD'S
FUND - 33 T. L. R. 208

- 32 & 33 Vict. c. 92 (*Fisheries*), s. 16. REX
v. CORK CO. JJ.

Div. Ct. (Ir.) [1917] 2 I. R. 430

REX (JAMES WHITE) v. CORK JJ.

Div. Ct. (Ir.) [1917] 2 I. R. 310

1870.

- 33 & 34 Vict. c. 46 (*Landlord and Tenant*), s. 45.
In re GEOGHEGAN - [1917] 2 I. R. 361

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Such Rules and Orders are also now officially published in a separate form under the Rules Publication Act, 1890. The number (*e.g.*, 1917, No. 1) following each Rule or Order is that by which it has been registered by the King's Printer under this Act; copies can be obtained from Messrs. Eyre & Spottiswoode, East Harding Street, Fetter Lane, E.C., by ordering them by this number. The Orders specially affecting the Legal Profession are also numbered consecutively in a Legal Series, L. 1, and so on; all the Orders of the year in this Series can be obtained by ordering the "Legal Series."

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COMMERCIAL CASES.

REPORTS OF CASES UNDER THE WORKMEN'S COMPENSATION ACTS.

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LOCAL GOVERNMENT REPORTS.

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TIMES LAW REPORTS.

SOLICITORS' JOURNAL.

The head-note to a case not reported in the "Law Reports" is reprinted from the series of Reports to which the first reference is given, with the permission of the proprietors of that publication, or, in the case of "Tax Cases," with the permission of the Controller of H.M. Stationery Office.

c.c.r.

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DIGEST OF CASES.

Explanation of References to the Official and Parliamentary Publications.

The figures and numerals placed after the words "Parl. Paper" refer to the Session, to the Number at the foot of each Paper, and to the price at which it can be obtained at Messrs. Eyre & Spottiswoode's, East Harding Street, Fetter Lane, E.C., and at other publishers: thus, in "1917 (375), Price 1/6," 1917 refers to the Session, and (375) to the number at the foot of the paper. Papers presented by Command are distinguished thus [C. 6606]. The F.—Record works are distinguished thus—1917 (F.—Record Works). The House of Lords Papers are distinguished by the letters H. L.: thus, 1917 (H. L. 150). The H.—Legal Official Publications are distinguished thus—1917 (H.—Legal); the I.—Statutes and Statutory Publications—Various thus—1917 (I.—Statutes and Statutory Publications—Various); the K.—Home Office thus—1917 (K.—Home Office); the R.—Local Government Board thus—1917 (R.—Loc. Govt. Bd.); the T.—Miscellaneous are distinguished thus—1917 (T.—Miscellaneous).

The Rules and Orders issued under Statutory Powers are now officially published in a separate form under the Rules Publication Act, 1893.* They are cited as *e.g.* St. R. & O. 1917, No. 1, the number following the year being that by which they have been registered by the King's Printer under this Act. The Orders specially affecting the Legal Profession are also numbered consecutively in a Legal Series, L. I. and so on; all the Orders of the year in this Series can be obtained by ordering the "Legal Series." Copies can be obtained from Messrs. Eyre & Spottiswoode and from other publishers at the prices stated by ordering them by the Registered Number. The price of the Statutory Rules and Orders is one penny each except where otherwise stated.

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See LANDLORD AND TENANT, col. 248.

ACCIDENT—Compensation.
See WORKMEN'S COMPENSATION.

—Insurance.
See INSURANCE (ACCIDENT).

ACCOMPLICE—Evidence—Corroboration.
See CRIMINAL LAW, col. 127.

ACCUSED—Statement by—Military Court of inquiry—Admissibility.
See CRIMINAL LAW, col. 128

ACKNOWLEDGMENT—Writing.
See LIMITATIONS, STATUTES OF, col. 254.

ACQUIESCENCE—Company—Agreement.
See COMPANY, col. 97.

ACT OF GOD—Extraordinary rainfall.
See WATER, col. 454.

"ACTIO PERSONALIS MORITUR CUM PERSONA."
See COMPANY, col. 90.

ACTION—Admiralty—Jurisdiction—Proceeds of sale of ship.
See SHIPPING, col. 392.

(2)

ACTION—*continued.*

—Ambassador—Privilege—Waiver.
See INTERNATIONAL LAW, col. 216.

—Bankrupt.
See BANKRUPTCY, col. 64.

Cause of—Felony—No prosecution—Infant plaintiff.
In an action by an infant plt., suing by her next friend, the statement of claim averred that "the deft. assaulted and beat the plt., who then was an infant, under the age of sixteen years, and then and there had carnal knowledge of her." The deft. moved to stay proceedings on the ground that the only cause of action disclosed by the statement of claim was a felony, for which the deft. had not been prosecuted:—
Held, by the C. A. (affirming the K. B. D.), that the statement of claim did not unequivocally or necessarily charge a felony, and that the Court, in the exercise of its discretion ought not to stay proceedings.
Smith v. Selwyn [1914] 3 K. B. 98, distinguished. *CARLISLE v. ORR* - - C. A. (Ir.) [1917] 2 I. R. 534

Cause of—Malice—Causing retirement of plaintiff from Navy.
An action will not lie against a superior official of the Army or Navy for maliciously causing the plt. to be retired from the Service. *FRASER v. HAMILTON* - - - C. A. 33 T. L. R. 431

Cause of—Photographs, Sole right of taking.
An exclusive right to take photographs is not a form of property known to the law.
The promoters of a dog show purported to assign the sole photographic rights in connection with the show. The assignee purported to assign to the plts. the sole Press photographic rights at the show. The promoters of the show did not cause any notice to be placed on the

* Statutory Rules and Orders other than those of a Local, Personal, or Temporary Character, issued in the year 1917; with a List of Statutory Orders of a Local Character arranged in Classes, an Appendix, of certain Orders in Council, &c., issued under the Royal Prerogative, and Index. Price 25s.

ACTION—continued.

tickets of admission or otherwise forbid the taking of photographs at the show. An independent photographer took photographs of the dogs exhibited and sold certain of them to the depts., and the depts. published the photographs so bought in an illustrated journal. In an action by the plts. for an injunction to restrain them from continuing to do so:—

Held, that the action would not lie, inasmuch as the promoters of the dog show had, in law, no exclusive right of photographing anything there, and therefore could not assign that right as property. They could have acquired such a right by contract by making conditions as to admission, but they had not done so, and therefore the plts. had failed to make out any cause of action.

Decision of *Horridge J.* [1916] 2 K. B. 880 affirmed. *SPORTS AND GENERAL PRESS AGENCY, L.D. v. "OUR DOGS" PUBLISHING CO. - C. A.* [1917] 2 K. B. 125; 86 L. J. (K. B.) 702; 116 L. T. 626; [1917] W. N. 72; 33 T. L. R. 204; 61 S. J. 293

— Emergency legislation.

See EMERGENCY LEGISLATION, col. 160.

— Husband and wife.

See HUSBAND AND WIFE, col. 193

— In rem—Reimbursement.

See SHIPPING, col. 415.

— Justice, Against.

See JUSTICES, col. 238.

— Maintenance—Maintained action successful—Liability of maintainer.

See MAINTENANCE, col. 270.

— Pr. late—Compromise.

See WILL, col. 463.

“**ACTUALLY PRESENT**”—Vessels—Destruction of enemy warships—Prize bounty.
See PRIZE COURT, col. 330.

ADDITIONAL COMMISSIONERS—Income tax.
See REVENUE, col. 358.

ADHERING TO THE KING'S ENEMIES—Adherence without the realm—Aid and comfort.
See CRIMINAL LAW, col. 133

ADJOINING OCCUPIERS—Farms—Fences—Repair.
See TRESPASS, col. 442.

ADJOURNMENT—Meeting—Company.
See COMPANY, col. 91.

ADMINISTRATION—*Creditor's action—Grant of limited administration in Probate Division—Practice—Administration judgment in Chancery—Form.*

In re MASTELLONI. BECKETT-OVERY v. MASTELLONI - Eve J. [1917] W. N. 253

— De Bonis non—Rival claimants to grant—Will.

See PROBATE, col. 332.

— Legacies—Interest.

See WILL, col. 473

ADMINISTRATION—continued.

— Receiver.

See PROBATE, col. 333.

— Trustees—Loan of securities to Treasury—Income or capital—Tenant for life and reversioner.

See CAPITAL AND INCOME, col. 76.

ADMINISTRATOR—*Sale of leasehold by—Power of sale for purpose of distribution among next of kin—Vendor and purchaser.*

An administrator, who has paid the funeral and testamentary expenses and debts of an intestate, has a power of sale over the leasehold property of the intestate for the purpose of distribution among the next of kin. *In re NORWOOD AND BLAKE'S CONTRACT*

O'Connor M.R. (Ir.) [1917] 1 I. R. 472

ADMIRALTY.

See PRIZE COURT and SHIPPING.

ADMISSIBILITY—Evidence.

See CRIMINAL LAW and EVIDENCE.

ADOPTION—Agreement—Company—Meeting.
See COMPANY, col. 97.

ADULTERATION.

Analyst's Certificate, col. 4.

Milk, col. 5.

Vinegar. See above, Analyst's Certificate.

Warranty, col. 6.

Analyst's Certificate.

Sufficiency of—Vinegar—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), ss. 6, 18, 21; schedule.

In proceedings against the respondent, under s. 6 of the Sale of Food and Drugs Act, 1875, for selling vinegar not of the nature, substance, and quality demanded, the analyst's certificate, which was in the form prescribed by the schedule to the Act, stated that the sample analysed contained 2.91 per cent. of acetic acid, and the following “observations” were added: “Normal vinegar contains at least 4 per cent. of acetic acid. This sample, therefore, is deficient in acetic acid to the extent of 27.2 per cent. of the minimum quantity which normal vinegar contains. This is equivalent to the presence in the sample of 27.2 per cent. of excess water.” No notice was given by the respondent requiring the analyst to be called as a witness, nor did the respondent give any evidence to rebut the statement in the certificate as to the quantity of acetic acid which normal vinegar contains. The justices dismissed the information on the ground that there was no evidence that a standard had been laid down as to the constituent parts of vinegar, and that, in the absence of such evidence the statement in the analyst's certificate as to normal vinegar containing at least 4 per cent. of acetic acid was unauthorized, and could not be acted upon:—

Held, that the justices were wrong, inasmuch as by the form of certificate given in the schedule to the Act the analyst was entitled to insert the

ADULTERATION (Analyst's Certificate)—*cont.* I. observation as to the quantity of acetic acid in normal vinegar; and as there was no evidence to contradict the certificate, the justice thought to have acted upon it and convicted the respondent. *ROBINSON v. NEWMAN*

Div. Ct. 86 L. J. (K. B.) 814; 15 L. G. R. 475; 117 L. T. 96; [1917] W. N. 157; 81 J. P. 187

Milk.

Deficiency in milk fat—Feeding of cows—Control of milk—Evidence—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 6—Sale of Milk Regulations, 1901, reg. 1.

B. was charged under s. 6 of the Sale of Food and Drugs Act, 1875, with selling milk which was deficient in milk fat. She contended that the deficiency was due to the feeding of the cows and not to interference with the milk. Control of the milk during the whole period from the time of the milking till the sale of the milk was not proved by her witnesses. The justices did not find that the deficiency was due to the feeding of the cows:—

Held, that the justices were entitled on the evidence to convict B. of the offence charged against her.

Hunt v. Richardson [1916] 2 K. B. 446 distinguished. *BOWEN v. JONES*

Div. Ct. 86 L. J. (K. B.) 802; 15 L. G. R. 517; 117 L. T. 125; 81 J. P. 178

Sale of as it came from cow—Cow not fully milked—Deficiency in milk fat—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 6.

Where the evidence is that milk has been sold as it came from the cow without abstraction or addition, the circumstance that, by reason of the cow not having been fully milked out, the milk so sold is deficient in milk fat does not constitute its sale to the public an offence against s. 6 of the Sale of Food and Drugs Act, 1875.

Hunt v. Richardson [1916] 2 K. B. 446 discussed and followed. *GRICE v. SMITH*

Div. Ct. 15 L. G. R. 769; 117 L. T. 477; 33 T. L. R. 541; 61 S. J. 677; 82 J. P. 2

Sample taken "in course of delivery"—Delivery by railway—Absence of inspector of food and drugs on arrival of milk—Interval between milk being placed on platform and sample taken—Police in control of milk during absence of inspector of food and drugs—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 6—Sale of Food and Drugs Act Amendment Act, 1875 (42 & 43 Vict. c. 30), s. 3.

The appellant sold and consigned milk to a purchaser under a contract which provided that the milk was to be delivered to the purchaser at a named ry. station and that "arrival of the milk at the said ry. station shall constitute delivery by the vendor to the purchaser." By direction of the respondent (an inspector of food and drugs) police officers met the train on its arrival at the ry. station, took possession of a churn containing the milk as it was removed from the train, placed it upon the platform, and prevented the consignee from taking possession of it until the respondent arrived at the station about twenty minutes later. The respondent

ADULTERATION (Milk)—*cont.* *over.*

then took a sample from the churn by dipping a pint measure into it.

Upon summary proceedings taken against the appellant under s. 6 of the Sale of Food and Drugs Act, 1875, for selling adulterated milk to the prejudice of the purchaser, the justices were of opinion that the sample was procured in "course of delivery to the purchaser" within the meaning of s. 3 of the Sale of Food and Drugs Act Amendment Act, 1875:—

Held, that as upon the facts it was possible to support the finding, the Div. Ct. could not interfere with it. *Cox v. Evans* - Div. Ct.

[1917] 1 K. B. 275; 86 L. J. (K. B.) 539; 14 L. G. R. 1178; 115 L. T. 779; 81 J. P. 53

— *Warranty.*

See below, Warranty.

Vinegar.

See above, Analyst's Certificate, col. 4.

Warranty.

Milk—Written warranty—Vendor's responsibility to cease at railway station—Interval between arrival at station and removal by purchaser—Authority to sell to all only to members of society—Sale to non-member—Liability of employers—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), ss. 6, 25.

The respondents, retailers, purchased milk from a dairy farmer under a contract, by which the latter agreed "to supply . . . milk, carriage paid," with a warranty of quality. The milk was delivered to the proper ry. station at 5.13 A.M., and was fetched away by the respondents at 8 A.M. the same morning by their servant. He poured the contents of the can into two smaller cans, and then took them round for distribution among the respondents' customers. He had no authority to sell milk to anybody except members of the respondent society who had previously ordered a supply. While so delivering the milk the servant sold a small quantity to a non-member, the agent of the appellant, an inspector of weights and measures, which was deficient in quality and not of the nature, substance, and quality demanded. When charged under s. 6 of the Sale of Food and Drugs Act, 1875, the respondents gave due notice, under s. 20, sub-s. 1, of the Sale of Food and Drugs Act, 1899, that they intended to rely on the above warranty by virtue of s. 25 of the Act of 1875. The magistrates found that the respondents purchased the milk as the same in nature, substance, and quality as that demanded by the appellant, and that they sold it in the same state as when they received it from the ry. co. and had no reason to believe at the time of the sale to the appellant that the milk was otherwise than of the nature, substance, and quality demanded. No evidence was offered by the respondents before the magistrates dealing with the period which elapsed between the arrival of the milk at the station and its being fetched by the respondents:—

Held, that, on the construction of the con-

ADULTERATION (Warranty)—continued.

tract, the milk was purchased by the respondents within the meaning of the Act of 1875 when delivered at the ry. station, and that consequently the burden of showing what happened afterwards to the milk was on them, which burden they had not discharged, and that therefore the defence given by s. 25 was not substantiated.

Pugh v. Williams (1917) 86 L. J. (K.B.) 107 followed.

Held, also, that in selling to the appellant the respondents' servant had not acted without their authority, but had only misused the actual authority to sell which they had given him, and therefore that the respondents had sold the milk to the appellant within the meaning of s. 6 of the Act of 1875. *ELDER v. BISHOP AUCKLAND CO-OPERATIVE SOCIETY* - Div. Ct. 86 L. J. (K.B.) 1412; 15 L. G. R. 579; 117 L. T. 281; 33 T. L. R. 401; 61 S. J. 593

Milk—Deficiency of fat—Defence of warranty—Milk purchased on arrival at railway station—Interval of time before milk fetched away—No evidence that milk not tampered with during interval—Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 25.

The respondent was charged, under s. 6 of the Sale of Food and Drugs Act, 1875, with selling milk not of the nature, substance, and quality demanded. It was proved that the milk was deficient in fat. The respondent had purchased the milk under a contract in writing, by which a farmer agreed to sell and deliver a quantity of milk, fresh and with all its cream, daily at Kilburn Ry. Station; but the responsibility of the farmer with regard to the quality and condition of the milk was to cease upon the arrival of the milk at the ry. station. The milk in question arrived at the station, and was fetched away by the respondent after the milk had been at the station for a substantial interval of time. The respondent called no evidence to prove that the milk had not been tampered with during that interval. The respondent relied upon the warranty as a defence to the charge:—

Held, that the respondent was not entitled to rely upon the warranty as a defence to the charge, as he had not satisfied one of the conditions of s. 25 of the Act of 1875 and proved that he sold the milk in the same state as when he purchased it.

Sanders v. Sadler (1906) 5 L. G. R. 240 distinguished and explained. *PUGH v. WILLIAMS*

Div. Ct. 86 L. J. (K.B.) 1407; 15 L. G. R. 573; 117 L. T. 191; [1917] W. N. 174; 81 J. P. 159

ADULTERY.

See DIVORCE.

ADVANCES.

See WILL.

ADVENTURE—Commercial—Frustration of.

See SHIPPING, col. 401

AEROPLANE — Assistance — Destruction of enemy warship—R.N.A.S. pilots and observers.

See PRIZE COURT, col. 329.

AEROPLANE HANGAR—Rating

See RATES, col. 345.

AFFIDAVIT—Evidence by—Divorce.

See DIVORCE, col. 143.

— Misleading.

See COMPANY, col. 88, and REVENUE, col. 359.

AFFIRMATION — Attestation.

See ARMY, col. 39.

AFTER-ACQUIRED PROPERTY.

See BANKRUPTCY, col. 60, and SETTLEMENT, col. 385.

AGE—Military service.

See ARMY, col. 31.

AGENCY AND AGENT.

See COMMISSION AGENT and PRINCIPAL AND AGENT.

AGENT FOR SALE — Purchaser — Goods — Prize Court.

See PRIZE COURT, col. 325.

“ AGREED TO BUY.”

See SALE OF GOODS, col. 366

AGREEMENT.

See CONTRACT.

— Company—Transfer—Conveyance or transfer on sale—Equitable interest—Stamp duty

See AUSTRALIA, col. 53.

— Company—Ultra vires—Validating statute subject to adoption by resolution—Defective notices of meeting—Acquiescence immaterial.

See COMPANY, col. 97.

— Compensation.

See WORKMEN'S COMPENSATION, col. 502.

— Farm—Fences—Repair.

See TRESPASS, col. 442.

— Marriage, Before, to live separate—Invalidity—Public policy.

See DIVORCE, col. 147.

— Municipal corporation—Electric light company—Right to purchase system—Severance of municipal district.

See CANADA, col. 63.

— Parol—Lease.

See SPECIFIC PERFORMANCE, col. 425.

— Sale of goods.

See SALE OF GOODS, col. 366

— Trustee — Bankruptcy — Debtor — Discharge.

See BANKRUPTCY, col. 60.

AGREEMENT TO BUY—Sale of goods.

See SALE OF GOODS, col. 366.

AGRICULTURAL HOLDINGS ACT, 1908.

See ARBITRATION, col. 26, and LAND LORD AND TENANT, col. 241.

AID AND COMFORT—King's enemies.

See CRIMINAL LAW, col. 123

AIRCRAFT—Enemy—Fire caused by bomb dropped by—Insurance.

See **LANDLORD AND TENANT**, col. 245

AIRSHIP—Enemy—Fire caused by.

See **INSURANCE (FIRE)**, col. 202.

ALIEN.

Deportation, col. 9.

Employment Agency, col. 9.

Internment, col. 10.

Nationality, col. 10.

Registration, col. 12.

Deportation.

Power of Secretary of State to choose country to which alien shall be deported—*Aliens Restriction Act, 1914* (4 & 5 Geo. 5, c. 12), s. 1, sub-s. 1—*Aliens Restriction (Consolidation) Order, 1916*, art. 12.

The provisions of s. 1, sub-s. 1, of the *Aliens Restriction Act, 1914*, and of the *Aliens Restriction (Consolidation) Order, 1916*, made thereunder, do not give a Secretary of State power to order the deportation of an alien to any particular country.

Those provisions, however, empower a Secretary of State, upon making a deportation order, to cause the alien to be detained and placed on board a ship which the Secretary of State selects, and there detained until the ship finally leaves the United Kingdom, with the result that the alien may be obliged to disembark at the port to which the ship sails.

The jurisdiction of the Secretary of State to make a deportation order under the above-mentioned Act and Order is not affected by the fact that the alien is a political refugee, though that fact may properly be taken into account by the Secretary of State in considering whether in the exercise of his discretion he will make a deportation order.

The Court refused to make absolute a rule for a writ of certiorari to bring up, for the purpose of quashing it, an order made by the Home Secretary under the above-mentioned Act and Order that the alien "shall be deported from the United Kingdom," the order being in form a valid order, though the Home Secretary stated that it was intended under the order to send the alien to a particular country.

Judgment of the Div. Ct. [1917] 1 K. B. 552 reversed. *REX v. HOME SECRETARY. Ex parte DUKE OF CHATEAU THIERRY* - C. A. [1917]

1 K. B. 922; 86 L. J. (K. B.) 923; 15 L. G. R.

351; 116 L. T. 226; [1917] W. N. 110;

33 T. L. R. 264; 81 J. P. 125;

61 S. J. 367

Employment Agency.

City of London—Application for licence by person of enemy origin—"Unsuitable" person—*London County Council (General Powers) Act, 1910* (10 Edw. 7 & 1 Geo. 5, c. cxxix.), ss. 21, 22—*British Nationality and Status of Aliens Act, 1914* (4 & 5 Geo. 5, c. 17), s. 3.

The respondent, a German, naturalized as a British subject in 1889, and against whose personal character and loyalty no suggestion was made, applied to the licensing authority

ALIEN (Employment Agency)—*continued.*

for a licence to carry on an employment agency in the city of London, such agency having for its object the procuring of employment for naturalized subjects of German, Austrian, or Hungarian birth. The licensing authority refused the application on the ground that under the present circumstances of the war they would not be justified in giving facilities to such persons to obtain situations in the city of London. The respondent appealed to an alderman, sitting as the appeal tribunal under the *London County Council (General Powers) Act, 1910*, who, after a rehearing of the application, decided that he was precluded by the provisions of the *British Nationality and Status of Aliens Act, 1914*, from holding on the facts that the applicant was an unsuitable person for the grant of a licence within s. 22, sub-s. 1, of the first-mentioned statute, and granted the licence. On a case stated under the *Summary Jurisdiction Acts* by the alderman:—

Held, that he was not so precluded, and that the case should be remitted to him for the purpose of considering whether, under the present circumstances of the war, the applicant, being of enemy origin, was an unsuitable person to hold the licence.

Quære, whether the alderman had any power, under the *Summary Jurisdiction Acts*, to state a special case for the opinion of the Court. *LONDON (CITY) CORPORATION v. WOLFF* - - - Div. Ct. 86 L. J. (K. B.) 534; 14 L. G. R. 1123; 115 L. T. 830; 80 J. P. 453

Internment.

Prisoner of war—*Non-combatant duly registered under Aliens Restriction Order*—*Prerogative of Crown to intern*—*Aliens Restriction Act, 1914* (4 & 5 Geo. 5, c. 12), s. 1, sub-s. 6.

Rule nisi obtained at the instance of the applicant, Josef Forman, calling on the commandant of the Knockaloe Internment Camp, Isle of Man, to show cause why a writ of habeas corpus should not issue directed to him to have the body of the applicant before the Court, on the grounds that no offence had been charged against him and so far as he could ascertain no order had been made for his imprisonment and none had been served upon him or brought to his notice.

The Div. Ct. discharged the rule. *REX v. KNOCKALOE CAMP COMMANDANT. Ex parte FORMAN* - - - Div. Ct. [1917] W. N. 283;

34 T. L. R. 4; 62 S. J. 35

Nationality.

Army—*Military service*—*Dual nationality*—*Declaration of alienage*—*Allegiance to neutral State*—*British Nationality and Status of Aliens Act, 1914* (4 & 5 Geo. 5, c. 17), s. 14, sub-s. 1.

The appellant, who was born in London in 1882, his father and mother being both Dutch subjects, was married and was ordinarily resident in Great Britain. On Nov. 8, 1916, he was arrested on a charge of failing, when called up for military service, to appear at the time and place appointed, and was brought before

ALIEN (Nationality)—continued.

a magistrate, who adjourned the case to Nov. 15, 1916. On Nov. 9, 1916, the appellant made a declaration of alienage under s. 14, sub-s. 1. of the British Nationality and Status of Aliens Act, 1914, and sent it to the Home Office. On Nov. 15, 1916, the magistrate held that the appellant was not discharged by the declaration from the obligation to perform military service, and that the charge was proved:—

Held, that a declaration of alienage made on Nov. 9, 1916, was no answer to a charge made and decided in reference to the circumstances which existed on Nov. 8, 1916, and therefore the magistrate's decision must be affirmed. *VEIGHT v. TAYLOR*

Div. Ct. 116 L. T. 446; 15 L. G. R. 491;
33 T. L. R. 317; 81 J. P. 199

Child born in America of British father—Subsequent acquisition of American nationality by father—No loss by child of status of British subject.

The appellant was born at Chicago in 1889, his father being then a British subject, although residing in America. In 1896 his father became naturalized as an American. In 1897 the appellant, who up to then had resided in America, came to England, and since that date he had never returned to America for any period whatever:—

Held, that there was evidence on these facts that the appellant had never lost the status of a British subject which he had acquired at birth. *ATKINSON v. RECRUITING OFFICER FOR BURY ST. EDMUNDS* - Div. Ct. 86 L. J. (K. B.) 415;
15 L. G. R. 315; 116 L. T. 305; [1917]
W. N. 129; 81 J. P. 74

Double nationality—Army—Natural-born British subject—Austrian subject—Declaration of alienage on attaining full age—Already enlisted in Army—Habeas corpus—British Nationality and Status of Aliens Act, 1914 (4 & 5 Geo. 5, c. 17), ss. 1, 11—Military Service Act, 1916 (5 & 6 Geo. 5, c. 104), s. 1.

A natural-born British subject, who is also a subject of an enemy State, cannot in time of war make a declaration of alienage under s. 14 of the British Nationality and Status of Aliens Act, 1914, and cease to be a British subject, so as to become solely a subject of the enemy State.

So *held* by Swinfen Eady L.J. and Bray J. in the C. A. (Bankes L.J. expressing no opinion), affirming the judgment of the Div. Ct. [1917] W. N. 102.

A natural-born British subject, who was also an Austrian subject, but who was resident in England, was in Jul., 1916, enlisted in the Army under s. 1, sub s. 1, of the Military Service Act, 1916. In Jan., 1917, he attained the age of twenty-one years, and made a declaration of alienage, and claimed thereby to have ceased to be a British subject and to be entitled to his discharge from the Army. Upon being refused his discharge he applied for a writ of habeas corpus:—

Held by the C. A. (Swinfen Eady and Bankes L.J.J. and Bray J.), even assuming the applicant was entitled to make a declaration of alienage,

ALIEN (Nationality)—continued.

that as, under s. 1, sub-s. 1, of the Military Service Act, 1916, the applicant was "deemed to have been duly enlisted for the period of the war," he was not entitled to be discharged from the Army. *REX v. COMMANDING OFFICER, 30TH BATTALION MIDDLESEX REGIMENT. Ex parte FREYBERGER* - C. A. [1917] 2 K. B. 129;
86 L. J. (K. B.) 943; 15 L. G. R. 327;
116 L. T. 27; [1917] W. N. 122;
33 T. L. R. 275; 81 J. P. 161

Registration.

Naturalized British subject—Registration as alien—"False particulars"—Liability—Aliens Restriction Act, 1914 (4 & 5 Geo. 5, c. 12), s. 1—Aliens Restriction (Consolidation) Order, 1916, art. 27 (2).

Art. 27 (2.) of the Aliens Restriction (Consolidation) Order, 1916 (which provides that "If any person furnishes . . . to a registration officer any false particulars, . . . he shall be deemed to have acted in contravention of this Order"), applies to British subjects as well as to aliens. *AGDESHMAN v. HUNT*

Div. Ct. 86 L. J. (K. B.) 1334; 15 L. G. R. 620; 117 L. T. 406; [1917] W. N. 226;
81 J. P. 251

ALIEN ENEMY.

Bankruptcy, col. 12.

Company. See AUSTRALIA, and below, Trading with the Enemy.

Debts, col. 13.

Insurance (Life), col. 13.

Partner, col. 14.

Patent, col. 14.

Representation Order, col. 16.

Residence in Enemy Country, col. 16.

Trading with the Enemy, col. 17.

Bankruptcy.

Company registered in England—British directors—Alien enemy shareholders—Commercial agent in enemy country—Carrying on business in enemy country—Enemy company—Right of proof.

In 1910 a co. was incorporated in England to acquire from the debtor, a German subject resident in England, a rubber estate in a German colony. The estate was transferred to and registered in the colony in the names of trustees for the co., and the debtor was appointed the commercial agent of the co. in the colony. The registered offices of the co. were in London. All the directors and the secretary were English, as also were the majority of the shareholders; but a considerable number of shares were held by Germans. In 1911 the co. dismissed the debtor on the ground of alleged defalcation. He then commenced an action in the High Court in Berlin against the co. and the trustees to recover possession of the estate. This action was dismissed with costs, which were fixed at a sum which was equivalent to 398l. in English money. In 1913 the co. sued the debtor in the King's Bench Division to recover that amount. This action was pending in Aug., 1914, when war was declared between Great Britain and Germany,

ALIEN ENEMY (Bankruptcy)—*continued*.

and the debtor was interned in this country as an alien enemy and was subsequently adjudicated a bankrupt. The co. claimed to prove in his bankruptcy for 398*l*. Horridge J. disallowed the proof on the ground that the co. was carrying on business in an enemy country and must therefore, according to the sixth proposition of Lord Parker's summary of the law in *Daimler Co. v. Continental Tyre and Rubber Co.* [1916] 2 A. C. 307, 346, be regarded as an alien enemy:—

Held by the C. A., that the mere fact that a British co. did business in an enemy country through a properly appointed agent there did not constitute it an enemy co.; that the co. was not an alien enemy, and was therefore entitled to prove.

Decision of Horridge J. reversed. *In re MILKES. Ex parte MUELSA RUBBER PLANTATIONS, LD.* - C. A. [1917] 1 K. B. 48; 86 L. J. (K. B.) 204; [1916] H. B. R. 160; 115 L. T. 490; 33 T. L. R. 28

Company.

See AUSTRALIA, col. 51, and below, Trading with the Enemy, col. 17.

Debts.

Debts due from enemy—Payment of—Interest—German ordinance prohibiting payment of interest.

A German ordinance of Sept. 30, 1914 (war between England and Germany having been declared on Aug. 4, 1914), forbade transmission of funds to Great Britain and Ireland or British Colonies and foreign possessions, and provided that the date for satisfaction of claims relating to property in favour of persons or corporate bodies having their domicile or place of business in those areas was to be deemed postponed till further notice, and proceeded: "No interest can be claimed in respect of the period during which the postponement continues":—

Held, that the ordinance was not part of the ordinary German law, and, so far as it cancelled the liability for interest, would not be recognized by English Courts. *In re FRIED KRUPP AKTIEN-GESELLSCHAFT* - Younger J. [1917] 2 Ch. 188; 86 L. J. (Ch.) 689; 117 L. T. 21; [1917] W. N. 171; 61 S. J. 593

French Court—Order of, appointing administrateur séquestre—Residence in France—English company—Dividend on shares—Payment to administrateur—Good discharge.

LEPAGE v. SAN PAULO COFFEE ESTATES CO. Peterson J. [1917] W. N. 216; 33 T. L. R. 457; 61 S. J. 612

Insurance (Life).

Pre-war contract—Mortgage of life policies—Surety—Outbreak of war—Assured an alien enemy—Whether policies avoided—Subsequent payment of premiums by surety—Illegal intercourse—Surety's right to transfer of securities—Trading with the Enemy Act, 1914 (4 & 5 Geo. 5, c. 87), s. 1, sub-s. 2—Trading with the Enemy Proclamation, Sept. 9, 1914, s. 5, sub-ss. 1, 5, 6—Trading with the Enemy Amendment Act, 1914 (5 Geo. 5, c. 12), s. 2; s. 6, sub-s. 1; s. 10.

ALIEN ENEMY (Insurance (Life))—*continued*.

B., an alien, effected two policies on his own life with an insurance co. and assigned them to the co. by way of mortgage to secure a loan, and he and his sureties jointly and severally covenanted with the co. to repay the loan with interest and also to pay the annual premiums for keeping the policies on foot. On the outbreak of war in August, 1914, B. became an alien enemy and left the country. Afterwards one of the sureties paid to the co. the premiums as they accrued due from time to time, which the co. accepted with the reservation that they did not warrant the validity of the policies. Subsequently the surety tendered the amount due on the mortgage and claimed an assignment of the policies which the co. refused to execute without a similar reservation:—

Held, that the policies were not voided merely by B. becoming an alien enemy, that the payment to and receipt by the co. of the premiums from the surety did not involve illegal intercourse with an enemy, and that the surety on payment of what was due under the mortgage was entitled to an assignment of the policies without reservation. *SELIEMAN v. EAGLE INSURANCE CO.*

Neville J. [1917] 1 Ch. 519; 86 L. J. (Ch.) 353; [1917] W. C. & Ins. Cas. 175; 116 L. T. 146; [1917] W. N. 65

Partner.

Outbreak of war—Dissolution of partnership—Legal Proceedings against Enemies Act, 1915 (5 Geo. 5, c. 30).

Held, unanimously, that a partnership between a British subject and a German subject, the latter being resident in Germany, in a business carried on in England, the continuance of which during war between England and Germany would involve intercourse with the enemy, is dissolved by, and at the date of, the outbreak of war between those countries.

Held, further, by Swinfen Eady L.J. and Bankes L.J. (A. T. Lawrence J. dissenting), that the provisions of the Partnership Act, 1890, as to the winding up of a partnership are applicable in such a case; that the English partner was not entitled to purchase the enemy partner's share at a valuation or to take it himself upon paying its value; and that the enemy partner was entitled to a share of the profits made after the dissolution by the English partner carrying on the business with the aid of the enemy partner's share of the capital.

Held by A. T. Lawrence J., that the enemy partner was not entitled to a share of the profits accruing after the partnership had become illegal. *HUGH STEVENSON & SONS, LD. v. AKTIENGESELLSCHAFT FÜR CARTONNAGEN-INDUSTRIE* - C. A. [1917] 1 K. B. 842; 86 L. J. (K. B.) 516; 115 L. T. 594; 33 T. L. R. 84; 61 S. J. 146

Patent.

Application to the Board of Trade to avoid or suspend under the Patents, Designs and Trade Marks (Temporary Rules) Acts, 1914—Patents granted to alien enemy—Beneficial interest in the patents alleged to be vested in a partnership firm

ALIEN ENEMY (Patent)—continued.

of three persons one of whom was a British subject—Application for a writ of prohibition against the Board of Trade to prohibit them from proceeding with the application to suspend—Application refused.

D. on Feb. 6, 1917, obtained a rule nisi directed to the Board of Trade to show cause why a writ of prohibition should not be awarded to prohibit them from proceeding with two applications, made on Nov. 9, 1916, by S. C., Ltd., to avoid or suspend two letters patent, granted to K., a German, on the ground that "it was not shown that the person or persons entitled to the benefit of such patents was or were a subject or subjects of any State at war with His Majesty, and that on the evidence before the Board it appeared that the benefit of such patents was vested in D. and K. and another German." It was stated in a statutory declaration made by D. that these three persons constituted a partnership firm under an agreement dated in 1902, and were jointly entitled to the patent by virtue of the agreement and transactions consequent thereon, but the agreement was not produced. Notice of the rule nisi was directed to be given to the Board of Trade and S. C., Ltd. Cause was shown on behalf of the Board of Trade against the rule nisi before a Div. Ct. of the K. B. D. :—

Held, that D. had not proved his claim to beneficial ownership; and that no ground for prohibition was made out. The rule nisi was discharged with costs. *REX v. BOARD OF TRADE. Ex parte DERRY. In re KOPFERS' PATENTS*

Div. Ct. 34 R. P. C. 241; 33 T. L. R. 316

Patents vested in alien enemies—British licensees—Suspension of patents by Board of Trade and licence granted to English company—Validity of order—"Person entitled to the benefit of" patent—Emergency legislation—Patents, Designs, and Trade Marks (Temporary Rules) Act, 1914 (4 & 5 Geo. 5, c. 27), s. 1—Patents, Designs, and Trade Marks Temporary Rules (Amendment) Act, 1914 (4 & 5 Geo. 5, c. 73), s. 1.

In 1907 an international association, called the Verband, was formed in Germany for the purchase from a co. incorporated in the United States of America of certain patents relating to machines for making glass bottles over a territory including the whole of Europe, and a contract was entered into by the Verband accordingly for the purchase of these patents, the purchase price being made payable to the vendors by instalments down to Mar. 1, 1917; and the vendors assigned the patents to a German co., called the Treuhand, on trust that they should assign the patents to the Verband upon payment in full of the purchase price, or re-assign them to the vendors in case of any default by the Verband. No default had in fact been made at the date of the order of the Board of Trade hereafter mentioned. National associations were formed in six European countries, including Germany and Great Britain, which took up the capital of the Verband in shares proportionate to the output of glass bottles in their several countries. Under an agreement entered into between the Verband and the British association, which resembled the agreements entered into by the Verband with the other

ALIEN ENEMY (Patent)—continued.

national associations, the British association had the right to obtain machines manufactured under the patents, and to enter into contracts with its members, granting them the right to be supplied with and use such machines, subject to certain restrictions on output. A licence was in fact granted by the British association to (inter alios) their co-plts., an English co., which sued on behalf of themselves and all other licensees. In 1915 the Board of Trade made an order suspending the British patents in favour of one of the defts., another English co., to which the Board granted a licence to make and use the inventions described in the patents. This order purported to be made under the Patents, Designs, and Trade Marks (Temporary Rules) Act, 1914, which empowers the Board to avoid or suspend "any patent or licence the person entitled to the benefit of which is the subject of any State at war with His Majesty." The plts. brought this action for a declaration that the order of the Board of Trade and the licence granted by them were null and void :—

Held, by the C. A. (affirming the decision of Sargant J. [1917] W. N. 22), that neither the interests of the British association and their licensees, nor the lien of the vendors for unpaid purchase-money, operated to deprive the Board of Trade of jurisdiction to make the order suspending the patents and to grant the licence complained of.

Held, also, by Sargant J., that the agreement between the Verband and the British association, so far as it had not then already been carried out, was avoided by the outbreak of war between Great Britain and Germany. *BRITISH ASSOCIATION OF GLASS BOTTLE MANUFACTURERS, LD. v. FORSTER & SONS, LD.* - C. A.

86 L. J. (Ch.) 489; 34 R. P. C. 217; 116 L. T. 433; [1917] W. N. 143; 33 T. L. R. 314; 61 S. J. 430

Petition for revocation—Patentee's application to amend patent by disclaimer—Patents and Designs Act, 1907 (7 Edw. 7, c. 29), ss. 21, 22.

Where the respondent to a petition for revocation of a patent is an alien enemy, that is no objection to an application by him under s. 22 of the Patents and Designs Act, 1907, for leave to amend his specification by way of disclaimer, inasmuch as the application is by way of defence to the petition.

Semble, however, that a patentee who is an alien enemy cannot make an initiative application under s. 21 of the Act for leave to amend. *In re STAHLWERK BECKER AKTIENGESELLSCHAFT'S PATENT* - Sargant J. [1917] 2 Ch.

272; 86 L. J. (Ch.) 670; 117 L. T. 216; 34 R. P. C. 339; [1917] W. N. 164; 33 T. L. R. 339; 61 S. J. 479

Representation Order.

Will—Construction—Whether alien enemy a residuary legatee—Death of alien enemy—Public Trustee—Practice—R. S. C., O. XVI., r. 46.

In re RAPHAEL WARBURG v. RAPHAEL

Neville J. [1916] W. N. 386; 61 S. J. 99

Residence in Enemy Country.

Carrying on business—Action for salary.

The plt. had been employed by the defts.

ALIEN ENEMY (Residence in Enemy Country) —continued.

as manager of their business in German South-West Africa before the war, and when it broke out he was interned by the Germans, and he was kept in internment until the territory was conquered by the British. In an action by the plt. to recover from the defts. his salary for the period of his internment:—

Held, that as the plt. during his residence in an enemy State was in law an enemy alien he could not recover. **SCOTLAND v. SOUTH AFRICAN TERRITORIES, LD.**

Darling J. 33 T. L. R. 255

Trading with the Enemy.

— Australia.

See AUSTRALIA, col. 51.

Company—Business ordered to be wound up—Action against owner—Leave of Board of Trade—Whether required—Trading with the Enemy Amendment Act, 1916 (5 & 6 Geo. 5, c. 105), s. 1, sub-s. 7.

SECT. 1, sub-s. 7, of the Trading with the Enemy Amendment Act, 1916, does not prevent a person who has a claim against a person, firm, or company whose business has been ordered to be wound up by the Board of Trade from bringing, without the consent of the Board of Trade, an action against such person, firm, or company to establish his rights and from obtaining judgment, but only prevents the enforcement of the judgment without such consent.

Observations on the administration of the Trading with the Enemy Acts. **HOLT v. A.E.G. ELECTRIC CO., LD.** - **Younger J. 34 T. L. R. 136; [1917] W. N. 383**

Company—Controller—Appointment—Registered office in England—Company's mines in Bolivia—Produce supplied to Government for munitions of war—Proposed transfer of business to Swiss company to avoid payment of income tax—Board of Trade—Appointment by Court of controller—"Expedient in the public interest"—Form of order—Trading with the Enemy Act, 1914 (4 & 5 Geo. 5, c. 87), s. 3—Trading with the Enemy Amendment Act, 1914 (5 Geo. 5, c. 12), s. 11, sub-s. 1.

A co. was incorporated in England to acquire and take over a business of mine owners and smelters carried on in Bolivia. At the commencement of the war the greater number of the shares in the co. were held by Bolivians. The directors of the co. had spared no effort to utilize for the benefit of the Allied Powers the mineral products of the co.'s mines and works. In order to escape the increasing burden of the British income tax the foreign shareholders resident abroad had become desirous that the business of the co. should be transferred to some other country. The directors accordingly issued a circular to the shareholders stating that they proposed to recommend to them that the place of business of the co. should in future be in Switzerland, and that for that purpose the undertaking should be vested in a co. incorporated in that country. At a meeting of shareholders this proposal was

ALIEN ENEMY (Trading with the Enemy) —continued.

sanctioned, and a provisional agreement for giving effect to it had been executed by the directors. In order to prevent the completion of the agreement and the transfer of the business under it the Board of Trade applied to the Court under s. 11, sub-s. 1, of the Trading with the Enemy Amendment Act, 1914, for the appointment of a controller:—

Held by **Younger J.**, that an order appointing a controller ought to be made, but that his powers would be limited to preventing the agreement for the transfer of the business from being carried into effect.

Held by the C. A., affirming the decision of **Younger J.**, that there was ample jurisdiction under s. 11, sub-s. 1, of the Act in the public interest to make the order and to prevent the English co. becoming a Swiss co. whose shareholders would presumably be able to transfer their shares to alien enemies. *In re ARAMAYO FRANKS MINES, LD.* - **C. A. [1917] 1 Ch. 451; 86 L. J. (Ch.) 225; 116 L. T. 54; [1917] W. N. 36; 33 T. L. R. 176; 61 S. J. 233**

Company—Controller—Winding up of business—Power to distribute surplus assets—Trading with the Enemy Amendment Act, 1916 (5 & 6 Geo. 5, c. 105), s. 1, sub-s. 3.

Where, under the Trading with the Enemy Amendment Act, 1916, the Board of Trade orders the winding up of a co.'s business and appoints a controller, and the co. is not in liquidation, the controller cannot be empowered by the Board to distribute assets in his hands, so far as they are not required for payment of the debts of the business and the costs of the winding up, among the shareholders of the co. *In re FR. MEYERS SOHN, LD.* - **Younger J. [1917] 2 Ch. 201; 86 L. J. (Ch.) 527; 117 L. T. 25; [1917] W. N. 193**

Affirmed on appeal - **C. A. [1917] W. N. 352; 62 S. J. 120**

Company—Controller—Winding up of business—Power to make call—"Assets of the business"—Trading with the Enemy Amendment Act, 1916 (5 & 6 Geo. 5, c. 105), s. 1, sub-s. 2, 3.

"Assets of the business" in sub-s. 3 of s. 1 of the Trading with the Enemy Amendment Act, 1916, does not include a co.'s uncalled capital.

A controller, appointed by the Board of Trade under the Trading with the Enemy Amendment Act, 1916, to conduct the winding up of a co.'s business in the United Kingdom directed by the Board to be wound up under that Act, cannot be invested by the Board with power to make a call upon the shareholders of the co. for the purpose of putting himself in funds to discharge the debts of the business and the costs, charges, and expenses of and incidental to its winding up.

In re W. Hagelberg Aktien-Gesellschaft [1916] 2 Ch. 503 and *In re Kastner & Co.* [1917] 1 Ch. 390 applied. *In re TH. GOLDSCHMIDT, LD.*

Younger J. [1917] 2 Ch. 194; 86 L. J. (Ch.) 521; 117 L. T. 23; [1917] W. N. 193; 61 S. J. 546

Company—Debenture-holders' action—Winding up of business by Board of Trade—

ALIEN ENEMY (Trading with the Enemy)—
continued.

Application for appointment of receiver and manager—Pending proceedings before Board of Trade—Duty to inform Court—Appointment of controller—Effect on floating charge—Removal of receiver and manager—Trading with the Enemy Amendment Act, 1916 (5 & 6 Geo. 5, c. 105), s. 1, sub-ss. 1, 2, 3, 4, and 7.

Where a co. has issued debentures which are secured by a floating charge on its undertaking and assets, and subsequently an order is made by the Board of Trade under s. 1 of the Trading with the Enemy Amendment Act, 1916, to wind up the business of the co., the order enables the controller to deal with the whole of the assets of the business notwithstanding the debenture-holders' charge and the appointment of a receiver and manager in their action.

On an application for the appointment of a receiver and manager in a debenture-holders' action the Court ought to be informed whether any proceedings before the Board of Trade for the winding up of the business of the co. under s. 1 of the Act of 1916 are pending or threatened, and any order made will be at the risk of the parties to it if it is obtained without such information having been supplied. *In re KASTNER & Co. AUTO-PIANO Co. v. KASTNER & Co.* - *Younger J.* [1917] 1 Ch. 390; 86 L. J. (Ch.) 235; [1917] H. B. R. 43; 116 L. T. 62; [1917] W. N. 15; 33 T. L. R. 149

— Enemy firm—Order of Board of Trade to wind up—Controller—Power of, to sue for debts in name of firm.
See EMERGENCY LEGISLATION, col. 155.

Firm—Partnership—Alien enemy partner—Action in firm name—Whether action maintainable.

The plts. were a firm of six partners, of whom four were British subjects and one was a subject of the United States of America and one was a German subject, the German partner being only entitled to one-fortieth of the profits.

The plts. made a loan to the deft., and in Feb., 1914, a large amount of principal and interest became due from the deft. to the plts. unless the deft. could show some defence to the claim. On the dissolution of the partnership by the outbreak of war with Germany in Aug., 1914, the connection of the German partner with the firm was treated as being at an end, and the assets were taken over by the partners continuing the business, the alien enemy's indebtedness to the firm being such that on the ultimate realization of all the assets there could only be a small balance in his favour. In Jan., 1916, the plts. brought an action in the firm name against the deft. to recover the principal and interest alleged to have become due in Feb., 1914, and they signed judgment in default of appearance. On an application by the deft. to set aside the judgment on the ground that one of the plts. was an alien enemy and was not entitled to sue during the continuance of the war:—

ALIEN ENEMY (Trading with the Enemy)—
continued.

Held (Pickford L.J. dissenting), that as the partners, other than the alien enemy partner, were entitled to get in the assets and for that purpose to make him a party to the action, and as the alien enemy partner could not during the war obtain any immediate benefit from any small amount which might be due to him, the mere fact that one of the plts. was an alien enemy was not, apart from any general merits, a sufficient ground for setting aside the judgment. *SPEYER BROTHERS v. RODRIGUES* - C. A. 34 T. L. R. 89

Vendor and purchaser—Sale of land—Irrevocable power of attorney given by German on eve of departure for Germany—Contract for sale by attorney—Validity—Payment of sum to or for benefit of enemy—Contract for benefit of enemy—Trading with the Enemy Proclamation No. 2, dated Sept. 9, 1914, pars. 3, 5—Trading with the Enemy Act, 1914 (4 & 5 Geo. 5, c. 87)—Trading with the Enemy Amendment Act, 1914 (5 Geo. 5, c. 12), s. 10—Trading with the Enemy Amendment Act, 1916 (5 & 6 Geo. 5, c. 105), s. 4.

An irrevocable power of attorney to sell land and give receipts for the purchase-money is not avoided by the donor of the power subsequently becoming an alien enemy.

The deft., a German by birth but for many years resident in England, although never naturalized, being about to proceed to Germany, executed a power of attorney on May 20, 1915, by which he appointed his solicitor his attorney to sell his leasehold house and to execute such transfers and deeds as were necessary. The power of attorney was made irrevocable for twelve months. On May 26 the deft. obtained a Government permit from the police to travel to Tilbury with the object of embarking for Germany by way of Flushing, and started on that day. On Jun. 2, 1915, the leasehold premises were sold to the plt. by public auction, and a deposit was paid and an agreement signed by him. There was no evidence as to the date when the deft. reached Germany, but it was some time between May 26 and Jun. 11, 1915. In an action brought by the plt. for a declaration that the agreement for sale had been dissolved by the act of the deft. in becoming an alien enemy: *Held* by Eve J. [1917] W. N. 21, that the plt. had failed to prove that on Jun. 2, the date of the sale, the deft. was an alien enemy and that the action therefore failed.

Held by the C. A. (reversing on this point the decision of Eve J.), that the proper inference to be drawn from the facts was that at the date of the sale the deft. had arrived and was resident in Germany and was therefore an alien enemy.

But *held* (Scrutton L.J. dissenting) that the power of attorney having been given by the deft. at a time when he was not an alien enemy, and being irrevocable for a year, was not avoided by his subsequently becoming an alien enemy; that the agreement entered into by the attorney in execution of the power did not involve any intercourse with the enemy, and was not therefore within the mischief of the common law or of the Trading with the Enemy Proclamation of Sept. 9, 1914, or of the Trading with the Enemy

ALIEN ENEMY (Trading with the Enemy)—
continued.

Acts, and was accordingly valid; that the sale could therefore legally be carried out by the attorney and if necessary be completed by a vesting order under the Trustee Act, 1893, or with the assistance of the custodian under s. 4 of the Trading with the Enemy Amendment Act, 1916; and that the p't. was not therefore entitled to have the agreement rescinded.

Porter v. Freudenberg [1915] 1 K. B. 857 followed.

Observations of Lord Parker in *Daimler Co. v. Continental Tyre and Rubber Co. (Great Britain)* [1916] 2 A. C. 307, 317, applied. *TINGLEY v. MÜLLER* - C. A. [1917, 2 Ch. 144; 86 L. J. (Ch.) 625; 116 L. T. 482; [1917, W. N. 180; 33 T. L. R. 369; 61 S. J. 478

"ALL MY MONIES"—Will.

See WILL, col. 458.

ALTERATION—Cheque.

See BANK, col. 55.

—Parishes.

See POOR LAW, col. 306.

ALUMINIUM—Contract to ship—Prohibition against export without a licence.

See CONTRACT, col. 107.

AMBASSADOR—Privilege.

See INTERNATIONAL LAW, col. 216.

AMBIGUITY—Will.

See WILL, col. 458.

AMENDMENT—Specification—Disclaimer.

See PATENT, col. 300.

"AMOUNT OF DEBT AND COSTS."

See COUNTY COURT, col. 119.

ANCIENT LIGHTS—Suspension—Rebuilding.

See EMERGENCY LEGISLATION, col. 157.

"AND" MEANING "OR."

See CHARITY, col. 80.

ANNUITY—Cesser of—Estate duty.

See REVENUE, col. 354.

—Charge on real and personal estate.

See LIMITATIONS, STATUTES, *of*, col. 254.

Will—Charge on realty—For life or in perpetuity—General power of appointment by will—Perpetual annuity.

A testator gave to his daughter an annuity of 30*l.* for her life, with a general power of leaving it by her will. The annuity was charged upon the testator's real estates. The daughter married, and by her will exercised the general power of appointment by giving "the said annuity of 30*l.*" to her daughter absolutely:—

Held, that the appointee was entitled to a perpetual annuity of 30*l.* *TOWNSEND v. ASCROFT* - - - Eve J. [1917] 2 Ch. 14; 86 L. J. (Ch.) 517; 116 L. T. 680; [1917, W. N. 163; 61 S. J. 507

Will—Gift of annuity to daughter until marriage—Proviso for cesser of annuity on marriage—Gift of capital sum in substitution—

ANNUITY—*continued.*

Death of daughter unmarried—No state gift—Gift for life.

A testator bequeathed to his daughter until she should marry an annuity of 125*l.*, and provided that on her marriage the annuity should terminate, and in lieu thereof he bequeathed to her the sum of 2500*l.* with interest at 5 per cent. The annuity and legacy were charged upon the testator's real estate which was devised to his son; and the will provided that the legacy should not be called in, unless the interest thereon fell into arrears, without notice to the testator's son, but that he or his heirs, &c., were to be at liberty to redeem the annuity at any time on giving notice of their intention so to do:—

Held, that the will manifested the intention of the testator to make a personal provision for his daughter during her life so long as she remained unmarried, in the event of her marriage to give her a fortune, and that the annuity determined upon her death unmarried.

Rishton v. Cobb (1839) 5 M. & C. 145 distinguished; *Boddington v. Chisat* (1884) 25 Ch. D. 685, *Mason v. Mason* [1919] 1 Ch. 695 followed. *In re BARKLEY. McCORMICK v. BARKLEY.*

O'Connor M.R. (Ir.) [1917] 1 I. R. 1

—Will—Income tax.

See WILL, col. 462.

ANSWER—King's Proctor's office.

See DIVORCE, col. 145.

ANTI-CHRISTIAN COMPANY—Capacity to receive gifts—Bequest to company—Validity.

See COMPANY, col. 92.

ANTICIPATION—Restraint on.

See DIVORCE, col. 142, and MARRIED WOMAN, col. 271.

"ANY CREDIBLE WITNESS."

See CRIMINAL LAW, col. 129.

"APPARENT POSSESSION."

See BILL OF SALE, col. 66.

APPEAL.

Bankruptcy. *See* BANKRUPTCY.

Costs. *See* COMPANY—WINDING UP.

County Court. *See* COUNTY COURT.

Court of Appeal—

Abstract Questions of Law, col. 23.

"*Criminal Cause or Matter*," col. 23.

Evidence. *See* NEGLIGENCE.

Mandamus. *See* RATES.

Notice. *See* ARMY.

Time, col. 24.

Criminal Law, col. 24.

Divisional Court. *See* ARMY.

Divorce. *See* DIVORCE.

Ecclesiastical Law. *See* ECCLESIASTICAL LAW.

London, col. 24.

APPEAL—*continued*.*Military Service.* See ARMY.*Poor Rate.* See RATES.*Privy Council*, col. 24.*Rates.* See RATES.*Tribunal*, col. 25.**Bankruptcy.**

See BANKRUPTCY, col. 58.

Costs.

— Judgment debt—Security for.

See COMPANY—WINDING UP, col. 98.

County Court.

— Executive damages—New trial.

See COUNTY COURT, col. 121.

Court of Appeal.*Abstract Questions of Law.*

Refusal of Court to decide—Copyright—Design—Infringement—Founts of printing type—Letters of alphabet, numerals, and symbols—“Pattern”—Reproduction, but not in same order—“Capable of being registered”—Determination of points of law agreed between the parties—R. S. C., 1883, O. XXI., rr. 2, 3—Appeal—Abstract questions of law—Function of Court in respect of.

The function of the Court is not to determine abstract questions of law based on suppositions and assumed facts, but only questions of law arising between the parties as the result of ascertained facts:—

Held, therefore, that an appeal from a decision of Eve J. ([1916] W. N. 355; 115 L. T. 166) could not be entertained where his Lordship had determined certain abstract questions of law agreed between the parties; and that the order of the learned judge must be discharged, but without prejudice to any question between the parties, the costs of the appeal to be costs in the action. STEPHENSON, BLAKE & CO. v. GRANT, LEGROS & CO., LD.

C. A. 116 L. T. 268; 86 L. J. (Ch.) 439;
34 R. P. C. 192; [1917] W. N. 47;
33 T. L. R. 174

“Criminal Cause or Matter.”

Practice—Charge under the Defence of the Realm (Consolidation) Regulations, 1914, reg. 45 (b)—Prohibition—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 47.

The appellants were on board a Danish ship which sailed from Christiania for New York. The ship was, under an agreement with the Danish Government, brought into Kirkwall Harbour for the purposes of search, and while there the appellants were removed from the ship by the British authorities and charged at Bow Street Police Court under reg. 45 (b) of the Defence of the Realm (Consolidation) Regulations, 1914, with having knowingly made false statements to the Russian Consul at the Russian Consulate in London with intent to obtain passports to proceed to Russia. The appellants applied for a writ of prohibition to prohibit the magistrate from further hearing and determining the charge on the ground that he

APPEAL (Court of Appeal)—*continued*.

had no jurisdiction in the matter. The K. B. D. having dismissed the application:—

Held, that the order of the K. B. D. was a judgment in a “criminal cause or matter” within s. 47 of the Judicature Act, 1873, and that no appeal lay to the C. A. *REX v. GARRETT. Ex parte SHARF AND OTHERS* - C. A. [1917] 2 K. B. 99; 86 L. J. (K. B.) 894; 116 L. T. 398; [1917] W. N. 134; 33 T. L. R. 305; 81 J. P. 145

See CANADA, col. 74.

Evidence.

— Admission of further.

See NEGLIGENCE, col. 287.

Mandamus.

— Time for appealing.

See RATES, col. 346.

Notice.

See ARMY, col. 45.

Time.

— Time for appealing—Prerogative writ of mandamus.

See RATES, col. 346.

Time for setting down—Production of order to proper officer of Court a condition precedent to entry—Entry on books of Court one clear day before appearance in printed list. R. S. C., 1883, O. LIIII., r. 8.

LAWSON v. FINANCIAL NEWS, LD.

C. A. [1917] W. N. 310; 34 T. L. R. 26

Criminal Law.

See above, Court of Appeal, col. 23,
and CRIMINAL LAW, col. 124.

Divisional Court.

— Notice—Copy—Service.

See ARMY, col. 45.

Divorce.

See DIVORCE, col. 146.

Ecclesiastical Law.

— Inhibition of incumbent and appointment of curate by bishop of diocese.

See ECCLESIASTICAL LAW, col. 151.

London.

— Buildings.

See LONDON, col. 264.

— Massage establishment—Refusal of county council to register.

See LONDON, col. 267.

Military Service.

See ARMY, col. 45.

Poor Rate.

See RATES, col. 344.

Privy Council.

See AUSTRALIA; CANADA; CEYLON;
CHARITY; JUDICIAL COMMITTEE;
PRIZE COURT; SOUTH AFRICA;
STRAITS SETTLEMENTS.

APPEAL—*continued.***Rates.***See RATES.***Tribunal.**

- London—Buildings.
See LONDON, col. 264.
- Military service—Exemption granted by local tribunal.
See ARMY, col. 45.

APPLICATION—Quarter sessions—Subsequent alteration of date of holding.
See HIGHWAY, col. 189.

APPOINTED DATE.*See ARMY*, col. 41.**APPOINTMENT**—Power of.*See POWER OF APPOINTMENT.*

— Trustees.

See SETTLED LAND, col. 354.

APPORTIONMENT—Income—Exclusion by express stipulation—Will—Trust for sale—Power of postponement—Whole income to be applied as income pending conversion—*Apportionment Act*, 1870 (33 & 34 Vict. c. 35), s. 7.

In re EDWARDS. NEWBERRY v. EDWARDS

Astbury J. [1917] W. N. 367; 34 T. L. R. 135; 62 S. J. 191

— Street—Expenses of making up.

See LOCAL GOVERNMENT, col. 263.

APPRAISEMENT—Salvage—Value of salvaged ship.

See SHIPPING, col. 416.**APPREHENSION OF WAR.**

See PRIZE COURT, col. 328, and *SHIPPING*, col. 416.

APPROPRIATION—Passing of property.*See SALE OF GOODS*, col. 367.

APPROVAL—Plans—Condition—Railway—Exemption from taxation.

See CANADA, col. 70.**ARBITRATION.***Arbitrator*, col. 26.*Costs. See above, Arbitrator.*

Friendly Society. See FRIENDLY SOCIETY.

Husband and Wife. See HUSBAND AND WIFE.

Insurance. See INSURANCE (BURGLARY).

Security for Costs. See above, Arbitrator.

Special Case, col. 27.

Third Arbitrator. See above, Arbitrator.

Workmen's Compensation. See WORKMEN'S COMPENSATION.

ARBITRATION—*continued.***Arbitrator.**

Costs—Discretion of arbitrator—Power to order successful claimant to pay costs—Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), *Sched. II.*, rr. 14, 15.

By the *Agricultural Holdings Act*, 1908, *Sched. II.*, r. 14, the costs of an arbitration under the Act "shall be in the discretion of the arbitrator, who may direct to and by whom and in what manner these costs or any part thereof are to be paid"; and by r. 15 the arbitrator in awarding costs is to take into account (*inter alia*) "the reasonableness or unreasonableness of the claim of either party, either in respect of amount or otherwise."

A claim by a landlord against the tenant of a farm for dilapidations was referred to arbitration under the *Agricultural Holdings Act*, 1908. The arbitrator stated a special case for the opinion of the county court upon the question of the tenant's liability under the lease, and this question was ultimately decided in the landlord's favour. The arbitrator by his award awarded the landlord as compensation one tenth of the amount claimed and directed that each party should bear his own costs of the litigation as to liability and that the remainder of the costs of the arbitration should be borne by the landlord:—

Held, that the arbitrator was acting in the exercise of his discretion, and that, in the absence of proof of misconduct or want of jurisdiction, the award could not be set aside.

Foster v. Great Western Ry. Co. (1882) 8 Q. B. D. 515 discussed.

Decision of the C. A. [1916] 2 K. B. 253 reversed. *GRAY v. LORD ASHBURTON* H. L. (E.) [1917] A. C. 26; 86 L. J. (K. B.) 224; 15 L. G. R. 9; 115 L. T. 729; [1916] W. N. 393; 81 J. P. 17; 61 S. J. 129

— Evidence.

See COMPENSATION.

Power of arbitrator to order party to give security for costs—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 2; *First Schedule*, clauses (f), (i).

An arbitrator under a submission by agreement out of Court has no power to make an order for security for costs. *In re AN ARBITRATION BETWEEN UNIONE STEARINERIE LANZA AND WIENER* - Div. Ct. [1917] 2 K. B. 558; 86 L. J. (K. B.) 1236; 117 L. T. 337; 61 S. J. 526

Third arbitrator—Appointment—Reference to two arbitrators with power to appoint a third—Appointment of third arbitrator after disagreement of other two—Validity of award.

Motion on behalf of the applicants, *Cater & Co., Ltd.*, for an order that the award of three arbitrators should be set aside upon the ground (*inter alia*) that the award was bad in that it appeared upon the face of the award that a third arbitrator was not appointed until after the two arbitrators appointed by the parties had disagreed.

The Div. Ct. *held* that the objection taken

ARBITRATION (Arbitrator)—continued.

to the award, that the third arbitrator was not appointed until the other two had failed to agree, could not be supported. The Court then considered the award upon the merits, and came to the conclusion that it must be set aside and the case remitted to the arbitrators. *In re AN ARBITRATION BETWEEN KIRTS & MURRAY, WILES & SON, LD., AND CATER & CO., LD.*

Div. Ct. [1917] W. N. 4

— Workmen's compensation.

See **WORKMEN'S COMPENSATION.**

Costs.

See above, Arbitrator, col. 26.

Friendly Society.

— Dispute.

See **FRIENDLY SOCIETY**, col. 182.

Husband and Wife.

See **HUSBAND AND WIFE**, col. 195.

Insurance.

Difference arising out of policy.

See **INSURANCE (BURGLARY)**, col. 201.

Security for Costs.

See above, Arbitrator, col. 26.

Special Case.

Award stated in form of special case—Opinion of counsel—Appeal for error of law on face of award—No appeal from decision of counsel—Arbitration Act, 1889 (52 & 53 Vict. c. 49), ss. 7, 19.

Where arbitrators, instead of stating their award in the form of a special case for the opinion of the Court under s. 7 of the Arbitration Act, 1889, by agreement state their award in the form of a special case for the opinion of counsel, who is substituted for the Court under that section, the decision of counsel cannot be questioned on the ground of an alleged error of law on the face of it, nor is there any right of appeal. *In re WULF AND LOUIS DREYFUS & CO.*

C. A. 86 L. J. (K. B.) 1368; 117 L. T. 583; 61 S. J. 693

Requisition of ships by Admiralty—Proclamation—Loss of and damage to requisitioned ships—Whether loss due to marine risk or war risk—Claim by owners for compensation—Reference by consent to Admiralty Transport Arbitration Board—Rules of Board, r. 6—Refusal of arbitrators to state special case—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 19.

The Admiralty requisitioned two ships for use in Government service under the Proclamation of Aug. 3, 1914, which provided that the owners of ships requisitioned should receive payment for their use and service during their employment in Government service and compensation for loss or damage thereby occasioned, to be arranged by mutual agreement or failing agreement by the award of the Admiralty Transport Arbitration Board. No terms were agreed upon, nor was any charterparty signed, although the Admiralty sent to the owners charterparty T. 99, under which the shipowners

ARBITRATION (Special Case)—continued.

were to be liable for marine risks and the Admiralty for war risks. One of the steamers was torpedoed by a German submarine, but not sunk; she was being towed to port, but before she reached the port a storm arose, and she went ashore and was totally lost. The other steamer was loaded with a cargo of ore for the carriage of which the vessel, as the owners alleged, was not suitable unless carefully stowed, and sent across the Atlantic under a charterparty entered into by the Admiralty, and was damaged on the voyage, as the owners alleged, through not being properly loaded. The owners of both steamers claimed compensation from the Admiralty alleging that the loss of and damage to the steamers were due to war risks. The Admiralty alleged that the loss and damage were due to marine risks for which the shipowners were responsible. By consent the disputes were referred to three arbitrators to be nominated by the President of the Admiralty Transport Arbitration Board under r. 6 of the rules governing the constitution of that board. In one case there was a written submission and in the other case correspondence which the Court held to amount to a submission. Rule 6 provides that "The President may direct that any claim coming before the Board may be heard and disposed of by a Tribunal consisting of the President or Vice-President sitting with two arbitrators selected by the President from the panel, and that the award of any two members of such tribunal shall be final and conclusive and shall not be subject to appeal or review." The President nominated two arbitrators to sit with the Vice-President in order to deal with each case, but he did not direct that the award of any two members of the tribunal should be final and conclusive. The shipowners in each case asked the arbitrators, under s. 19 of the Arbitration Act, 1889, to state a case for the opinion of the High Court, but the arbitrators refused to do so unless ordered by the Court:—

Held, that the provision in r. 6 that the award of the arbitrators should be final and conclusive did not apply as the President had not so directed, but that even if the President had so directed the arbitrators could still be ordered by the Court, under s. 19, to state a special case for the opinion of the Court upon questions of law arising in the reference. *LOBITOS OILFIELDS, LD. v. ADMIRALTY COMMRS. CROWN STEAMSHIP CO. v. SAME* - - Div. Ct. 86 L. J. (K. B.) 1444; 117 L. T. 28; [1917] W. N. 227; 33 T. L. R. 472

Third Arbitrator.

See above, Arbitrator, col. 26.

Workmen's Compensation.

See **WORKMEN'S COMPENSATION.**

ARBITRATION ACT, 1889.

See **ARBITRATION**, col. 26, and **HUSBAND AND WIFE**, col. 195.

ARBITRATOR.

See **ARBITRATION and COMPENSATION.**

ARCHBISHOP—Discretion—Court constituted under the Benefices Act, 1898.
See *ECCLESIASTICAL LAW*, col. 151.

ARCHITECT—Superintending—Certificate of—General line of buildings—London.
See *LONDON*, col. 245.

ARMY.

Court-martial, col. 29.

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Military Service—

Exemption, Grounds of, col. 31.

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Court-martial.

Field general—Power to sit in camera—Form of commitment—Rules of Procedure, 1907, made under Army Act, 1881 (44 & 45 Vict. c. 58), Appendix III., Form A—Defence of the Realm Consolidation Act, 1914 (5 Geo. 5, c. 8), s. 1, sub-s. 4—Defence of the Realm (Amendment) Act, 1915 (5 Geo. 5, c. 34), s. 1, sub-ss. 1, 7—Proclamation suspending s. 1 of Act of 1915—Offence committed before date of Proclamation.

By s. 1, sub-s. 4, of the Defence of the Realm Consolidation Act, 1915, "For the purpose of the trial of a person for an offence under the regulations by court-martial and the punishment thereof, the person may be proceeded against and dealt with as if he were a person subject to military law and had on active service committed an offence under section five of the Army Act."

By the Defence of the Realm (Amendment) Act, 1915, s. 1, sub-s. 1, "Any offence against any regulations made under the Defence of the Realm Consolidation Act, 1914, which is triable by court-martial may, instead of being tried by a court-martial, be tried by a civil court with a jury. . . ."

By sub-s. 7, "In the event of invasion or other special military emergency arising out of the present war, His Majesty may by Proclamation forthwith suspend the operation of this section, either generally or as respects any area specified in the Proclamation"

ARMY (Court-martial)—*continued.*

A British subject was charged with having on Apr. 24, 1916, taken part in an armed rebellion and in the waging of war against His Majesty the King, such act being of such a nature as to be calculated to be prejudicial to the defence of the realm, and being done with the intention and for the purpose of assisting the enemy. On May 5, 1916, he was tried before a field general court-martial convened in Dublin and was convicted.

On Apr. 26, 1916, His Majesty, by Proclamation issued under s. 1, sub-s. 7, of the Defence of the Realm (Amendment) Act, 1915, suspended the operation of that section in Ireland:—

Held, that by virtue of the Proclamation the prisoner became triable by court-martial notwithstanding that the offence with which he was charged had been committed before the date of publication of the Proclamation.

A field general court-martial is only a particular form of a general court-martial.

The prisoner after his conviction was committed to prison, the commitment being in Form A in Appendix III. to the Rules of Procedure, 1907, made under the Army Act, 1881:—

Held, that under s. 172 of the Army Act, 1881, sub-ss. 2 and 4 (which provide in effect that any order defective in form shall not be illegal only by reason of any informality or error in it), coupled with r. 133a of the Rules of Procedure, 1907 (which provides that an omission of or deviation from a form shall not render an act or thing invalid), no defect in the form would render the detention in custody of the person under the commitment illegal.

Held, further, that there was nothing on the face of the commitment which showed want of jurisdiction to act under it.

Where a commitment is after conviction, the Court is bound to look at the conviction in order to see whether there is more than a technical defect in the commitment, and a good conviction will cure a defect in the commitment.

Rex v. Hawkins (1715) Fortescue, 272, and *Rex v. Taylor* (1826) 7 Dow. & Ry. 622 followed.

By clause (c) of r. 119 of the Rules of Procedure, 1907, "the proceedings shall be held in open court, in the presence of the accused, except on any deliberation among the members, when the court may be closed":—

Held, that the words "open court" mean a Court to which the public have a right to be admitted, but they do not include a Court where the public are excluded although the accused and his representatives are allowed to be present.

There is inherent jurisdiction in every Court, including a field general court-martial, to exclude the public from a trial if it is necessary for the administration of justice.

Scott v. Scott [1913] A. C. 417 followed. *REX v. LEWES PRISON (GOVERNOR). Ex parte DOYLE* Div. Ct. [1917] 2 K. B. 254; 86 L. J. (K. B.) 1514; 116 L. T. 407; [1917] W. N. 91; 81 J. P. 173; 33 T. L. R. 222

Court of Inquiry.

Irregular proceedings—Mandamus—Jurisdiction—Appropriate remedy available—Discre-

ARMY (Court of Inquiry)—continued.

tionary power—Ineffective remedy—Courts of Inquiry Regulations, No. 124 (E) and (F)—Army Act, 1881 (44 & 45 Vict. c. 58), s. 42.

By the regulations made under s. 70 of the Army Act for holding military courts of inquiry it is provided that previous notice should be given of the time and place of the meeting of a court of inquiry, and of all adjournments of that court, to all persons concerned in the inquiry; and that whenever any inquiry affects the character or military reputation of an officer, full opportunity must be afforded to the officer of being present throughout the inquiry.

An officer, whose conduct was brought before a court of inquiry by the order of a general officer in command, complained that the above regulations had not been complied with, and that as the result of evidence given before the court he had been ordered by the Army Council to revert to half-pay. He applied to the Army Council, who refused to reopen the matter. He then obtained a rule nisi for a mandamus to the Army Council commanding them to cause the court of inquiry to reassemble to hear and determine his case according to law:—

Held, that the rule must be discharged, because (1.) the Court will not intervene in matters relating to military law prescribing rules for the guidance of officers; (2.) another and equally appropriate remedy was open to the officer under s. 42 of the Army Act; (3.) the power of the Army Council to assemble a court of inquiry is a discretionary power, and the Court will not order an authority to exercise a discretion in a particular way; (4.) the remedy by mandamus, if available, would in the circumstances be ineffective.

Dawkins v. Lord Rokeby (1866) 4 F. & F. 806 and *Marks v. Frogley* [1898] 1 Q. B. 888 approved and applied. *REX v. ARMY COUNCIL. Ex parte RAVENSCROFT* - Div. Ct. [1917] 2 K. B. 504; 86 L. J. (K. B.) 1087; 117 L. T. 306; 33 T. L. R. 387

Military Service.*Exemption, Grounds of.**Age Limit.*

Exemption, Certificate of—Attainment of age of forty-one during currency of certificate—Liability to be subsequently called up for service—Military Service Act, 1916 (5 & 6 Geo. 5, c. 104), s. 2, Sched. I., clause 6—Military Service Act, 1916 (Sess. 2) (6 & 7 Geo. 5, c. 15), s. 1, sub-s. 1.

By s. 1, sub-s. 1, of the Military Service Act, 1916 (Sess. 2), "Every male British subject who . . . for the time being has attained the age of eighteen years and has not attained the age of forty-one years, shall, unless he . . . is for the time being within the exceptions set out in the First Schedule to the Military Service Act, 1916, . . . be deemed as from the appointed date to have been duly enlisted. . . . The appointed date shall, as respects men who come within the operation of this section on the passing of this Act, be the thirtieth day after the date of the passing of this Act . . ." Amongst the exceptions set out in the First Schedule to the Military Service

ARMY (Military Service)—continued.

Act, 1916, are "men who hold a certificate of exemption under this Act for the time being in force." By s. 3, sub-s. 3, of the Military Service Act, 1916, as amended by s. 6 of the Military Service Act, 1916 (Sess. 2), "Where a certificate of exemption ceases to be in force owing to . . . the expiration of the time for which the certificate was granted, the man to whom the certificate was granted shall, as from the expiration of two weeks after the date on which the certificate so ceases to be in force, be deemed to have been enlisted and transferred to the reserve in the same manner as if no such certificate had been granted unless in the meantime the man has obtained a renewal of his certificate." Sub-s. 5: "Where an application has been made by or in respect of any man for a certificate of exemption or for a renewal of such a certificate, he shall not be called up for service with the colours until the application has been finally disposed of."

The appellant, who was between the ages of eighteen and forty-one at the time the Act of 1916 (Sess. 2) was passed (May 25, 1916), applied for a certificate of exemption before the appointed date, which in his case was Jun. 24, 1916. The certificate was granted and was subsequently extended to Jan. 1, 1917, when (the appellant not having applied for any further extension) it ceased to be in force. In Nov., 1916, the appellant had attained the age of forty-one. In Mar., 1917, he was called up for service:—

Held, that, although at the date he was called up for service he had attained forty-one years of age, he was nevertheless liable to serve, inasmuch as the effect of the statutes was that, not having attained forty-one years of age at the appointed date, he was as from the passing of the Act of 1916 (Sess. 2) within its operation, and was only exempt from service so long as a certificate of exemption (which he was unable to produce) was "for the time being" (i.e., at the time the question between him and the military authorities arose) in force, or until an application for its renewal had been finally disposed of. *RIDOUT v. COPE* - Div. Ct. [1917] 2 K. B. 706; 86 L. J. (K. B.) 1311; 15 L. G. R. 635; 116 L. T. 728; [1917] W. N. 225; 33 T. L. R. 452; 81 J. P. 218

Discharge.

Discharge on ground that "services no longer required"—Effect of—Military Service Act, 1916 (5 & 6 Geo. 5, c. 104), Sched. I., clause 5—Military Service Act, 1916 (Sess. 2) (6 & 7 Geo. 5, c. 15), s. 1; s. 3, sub-s. 1; s. 17, sub-s. 2.

A man who has been discharged from the military service of the Crown in consequence of his services being no longer required is still deemed as from the appointed date applicable to him (i.e., the thirtieth day after the date of his discharge) to have been enlisted and transferred to the reserve under s. 1, sub-s. 1, of the Military Service Act, 1916 (Sess. 2).

So *held* by Darling and Avory JJ. (*Bailhache J. dissenting*).

Per Avory J.: Under the Military Service Act, 1916 (Sess. 2), there may be more than

ARMY (Military Service)—continued.

one appointed date for the same man. *REX v. GOVERNOR OF WORMWOOD SCRUBBS PRISON. Ex parte RILEY* - Div. Ct. [1917] 2 K. B. 847; 15 L. G. R. 826; 117 L. T. 607; [1917] W. N. 285; 34 T. L. R. 7; 81 J. P. 301; 62 S. J. 8

Enlistment—Derby group scheme—Medical examination—“Not accepted—medically unfit”—Army Act, 1881 (44 & 45 Vict. c. 58), s. 80, sub-s. 4 (b).

On Dec. 10, 1915, B. attested as a recruit under the Derby group scheme, and took the oath of allegiance. He served for one day with the colours, and received a day's pay. On Dec. 11 he was transferred to the Army Reserve. He was not medically examined before his attestation or transfer to the Reserve. On Mar. 1, 1916, he was medically examined. As a result, his medical history sheet was stamped with the words, “Not accepted—medically unfit,” and above the signature of the medical officer was written, “Unfit—deafness.” After the medical examination the recruiting officer gave him a document, in which there were spaces for his name, the class of service for which he had been found fit, the unit to which he had been posted, and the officer to whom he had been ordered to report. With the exception of the appellant's name, none of these spaces were filled up, but the words “Not accepted—medically unfit” were stamped across them. This document was signed by the recruiting officer. The words “Medically unfit” were also written across B.'s attestation paper. B. was therefore sent home without having been posted to any unit. He was not given any certificate of discharge, nor did his name appear in the discharge book of his recruiting area. On Dec. 23, 1916, a notice was served on him requiring him to present himself for medical re-examination on Jan. 9, 1917. He ignored this notice, and also a further notice calling upon him to rejoin the colours on Jan. 22:—

Held, that when B. signed the declaration in his attestation paper and took the oath of allegiance he was to be deemed to be enlisted in His Majesty's regular forces, and that the proceedings on Mar. 1, 1916, did not constitute a discharge therefrom. *Boots v. Elvy*

Div. Ct. 86 L. J. (K. B.) 659; 15 L. G. R. 484; 116 L. T. 307; [1917] W. N. 115; 33 T. L. R. 272; 81 J. P. 129

Officer.

“For the time being within the exceptions set out in the First Schedule to the Military Service Act, 1916”—*Members of His Majesty's regular or reserve forces—Officer at time of passing of Act—Subsequent resignation—Liability to serve—Military Service Act, 1916 (5 & 6 Geo. 5, c. 104), Sched. I.—Military Service Act, 1916 (Sess. 2) (6 & 7 Geo. 5, c. 15), s. 1.*

The appellant was an officer in His Majesty's Regular Forces at the time the Military Service Act, 1916 (Sess. 2), was passed. Subsequently he resigned his commission. Shortly afterwards a notice was sent to him calling him to the colours under the provisions of the Military Service Act,

ARMY (Military Service)—continued.

1916 (Sess. 2). The appellant was between the ages of 18 and 41 years:—

Held, that the words “for the time being within the exceptions set out in the First Schedule to the Military Service Act, 1916,” in s. 1 of the Military Service Act, 1916 (Sess. 2), do not refer to the time of the passing of the Act, but to the time when a man is called upon to serve after the passing of the Act, and that therefore, as the appellant when the notice was served upon him was not an officer in the Army, and therefore not within the exceptions set out in Sched. I. to the Military Service Act, 1916, he was liable to serve. *FRASER v. MILITARY AUTHORITIES* - Div. Ct. 86 L. J. (K. B.) 953; 15 L. G. R. 508; 116 L. T. 447; [1917] W. N. 147; 81 J. P. 279

Prisoner of War.

“Captured or interned by the enemy, and . . . released or exchanged”—*Detention for inquiries and release—Military Service Act, 1916 (Sess. 2) (6 & 7 Geo. 5, c. 15), s. 8.*

Sect. 8 of the Military Service Act, 1916 (Sess. 2), exempts from military service under the Military Service Acts any person who has at any time since the beginning of the present war been a prisoner of war, captured or interned by the enemy, and has been released or exchanged.

The appellant, a British subject, who had lived at Hamburg for twelve years, two days after the outbreak of war between Great Britain and Germany in 1914 left Hamburg for Denmark by train; but before reaching the frontier he was stopped, and was detained under an armed guard of the German forces for some six hours, being told that he was a prisoner of war. He was then allowed to proceed, but was afterwards again similarly detained for some five hours, again being told that he was a prisoner of war. After another detention he was allowed to continue his journey, and ultimately reached England. In 1917 he was charged with being an absentee under the Military Service Acts; and the magistrate convicted him, holding that he had not been a prisoner of war captured by the enemy within the meaning of the above section:—

Held, on a case stated, that there was evidence to support such finding. *ROBINSON v. METCALF* - Div. Ct. 86 L. J. (K. B.) 1476; 15 L. G. R. 727; 81 J. P. 283; 33 T. L. R. 542

Regular Minister of Religious Denomination.

Church of England lay preacher—Date of calling up for service—Pending application for leave to appeal—“Finally disposed of”—Military Service Act, 1916 (5 & 6 Geo. 5, c. 104), s. 3, sub-s. 5; Sched. I., par. 4.

The respondent, a member of the Church of England, had not been ordained priest or deacon, but for the past twelve years had devoted himself to the duties of an evangelist, preaching and taking such services as could be taken by a layman under permits from the bishop. In Mar., 1917, he applied for exemption

ARMY (Military Service)—continued.

from military service and was granted six months. The military representative appealed; and on May 23 the County of London Appeal Tribunal allowed the appeal and held the respondent liable to serve. On May 29 the respondent applied to the appeal tribunal for leave to appeal to the Central Tribunal. On Jun. 2 notice was given to the respondent to present himself for service with the colours on Jun. 9. On Jun. 7 the respondent received notice from the appeal tribunal that his application for leave to appeal was refused:—

Held, following *Simmonds v. Elliott* [1917] 2 K. B. 894, that a lay member of the Church of England, although duly authorized to preach and conduct such services as a layman could conduct, was not a regular minister of a religious denomination within the meaning of the exceptions of the Military Service Act, 1916.

Further, that his application for exemption was "finally disposed of" within the meaning of s. 3, sub-s. 5, when the decision of the appeal tribunal was given—i.e., these words must be read as meaning that an application for exemption is finally disposed of when the appeal tribunal refuse the appeal. *ROBINS v. WOOD*

Div. Ct. 15 L. G. R. 820; [1917] W. N. 302; 81 J. P. 311

Church of England—Lay reader—Military Service Act, 1916 (5 & 6 Geo. 5, c. 104), Sched. I., clause 4—Justices—Case stated—Non-service of copy of notice of appeal and case on respondent before deposit of case at Central Office—Jurisdiction to hear case—Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), s. 2.

By s. 1, sub-s. 1, of the Military Service Act, 1916 (Sess. 2), coupled with clause 4 of the exceptions contained in the First Schedule to the Military Service Act, 1916, men for the time being "in holy orders or regular ministers of any religious denomination" are exempted from liability to service under the Military Service Acts, 1916:—

Held, that with regard to those religious bodies which include among their members men in holy orders—such as the Churches of England and Rome—members of them who claim exemption under the clause must bring themselves within the words "in holy orders"; but as to any other religious denomination, any man who is a member of it, and who claims exemption under the clause, must, in order to substantiate his claim, show that he is a regular minister of the religious denomination.

A lay reader of the Church of England who devotes his whole time to his office and has no other profession or living but is not in holy orders is not entitled to the exemption from military service conferred by the clause.

In an appeal by way of case stated from a decision of justices difficulty was experienced in serving the respondent with the notice of appeal and a copy of the case, with the result that, when he was ultimately found, instead of the service on him taking place before the case had been lodged at the Central Office in compliance with s. 2 of the Summary Jurisdiction Act, 1857, it was not effected until half an hour afterwards:—

ARMY (Military Service)—continued.

Held, that, notwithstanding the irregularity in the service, the Court in the circumstances had jurisdiction to hear the appeal. *SIMMONDS v. ELLIOTT* - Div. Ct. [1917] 2 K. B. 894; 15 L. G. R. 816; [1917] W. N. 291

Person becoming minister after "appointed date"—Military Service Act, 1916 (5 & 6 Geo. 5, c. 104), Sched. I., clause 4—Military Service Act, 1916 (Sess. 2) (6 & 7 Geo. 5, c. 15), s. 1, sub-s. 1.

By s. 1, sub-s. 1, of the Military Service Act, 1916 (Sess. 2), "Every male British subject who . . . for the time being has attained the age of eighteen years and has not attained the age of forty-one years, shall, unless he either is for the time being within the exceptions set out in the First Schedule to the Military Service Act, 1916 . . . or has attained the age of forty-one years before the appointed date, be deemed as from the appointed date to have been duly enlisted . . . and to have been forthwith transferred to the reserve. . . . The appointed date shall, as respects men who come within the operation of this section on the passing of this Act, be the thirtieth day after the date of the passing of this Act. . . ."

Clause 4 of the exceptions set out in the First Schedule to the Military Service Act, 1916, contains the exception "Men in holy orders or regular ministers of any religious denomination."

The appointed date for the appellant (who was between the ages of eighteen and forty-one years on the passing of the Act of 1916 (Sess. 2) was Jun. 24, 1916, i.e., thirty days after the passing of the Act. In Feb., 1917, he was formally appointed a regular minister of a religious denomination, but he was not a minister before that date. On May 3, 1917, he was called up for service:—

Held, that from Jun. 24, 1916, the appellant must be deemed to have been duly enlisted in the regular forces and to have been forthwith transferred to the reserve; that he thus acquired a statutory status; that he could not subsequently by any voluntary act on his part—such as being formally appointed a regular minister of a religious denomination—divest himself of that status, and he was therefore on May 3, 1917, liable to military service in accordance with the notice of that date.

Held, further, that the words in the subsection "for the time being" within the exceptions mean that a man must in order to obtain the benefit of an exception in the schedule be within it on the appointed day applicable to him.

Fraser v. Military Authorities [1917] W. N. 147 and *Rex v. 30th Battalion Middlesex Regiment Commanding Officer, Ex parte Freyberger* [1917] 2 K. B. 129 followed. *STONE v. WOOD*

Div. Ct. [1917] 2 K. B. 885; 15 L. G. R. 836; 117 L. T. 604; [1917] W. N. 284; 34 T. L. R. 6; 62 S. J. 35

Religious denomination—Elder of Latter Day Saints—Military Service Act, 1916 (5 & 6 Geo. 5, c. 104), Sched. I., par. 4.

The appellant belonged to the Church of Jesus Christ of Latter Day Saints, which has a

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membership of 600,000 in the United States and 10,000 in this country. It has articles of faith, with a ministry consisting of elders and priests, who alone can administer the ordinances. It is the rule and practice of the Church that the ministers should not be paid, and in the absence of private means should earn their own living. The appellant was ordained priest in 1910, an elder in May, 1914, and had the oversight of a church in this country with a membership of 400, including children over eight years of age, and regularly conducted the services, administered the ordinances, and did the pastoral work. He earned his living as manager of a grocery warehouse, and so registered himself under the National Registration Act, 1915. The justices decided that the Church was an alien body with too small a membership to be recognized in this country as a religious denomination within the meaning of the Military Service Act, 1916, and that the appellant was liable to military service as not being within the exemption as a regular minister of a religious denomination:—

Held, that there was no evidence to justify the justices in coming to that conclusion, and, further, that there was evidence which they must consider as to whether the appellant was a regular minister within the Act, and that the case must accordingly be remitted to them.
HAWKES v. MOXEY - Div. Ct. 86 L. J. (K. B.) 1530; 15 L. G. R. 420; 116 L. T. 506; 33 T. L. R. 308; 81 J. P. 186

Religious denomination—Strict Baptists—Military Service Act, 1916 (5 & 6 Geo. 5, c. 104), Sched. I., par. 4.

The appellant was elected minister of a congregation of the denomination of Strict Baptists. There was no formal ordination service. He became tenant of a room in which his congregation met, and paid 3s. a week for rent. He was paid no settled salary, but a collection was made each Sunday and the money handed to him. He paid all expenses and retained the balance, which amounted to about 20l. per annum. His congregation consisted of about 30 persons. His name appeared in the *Christian's Pathway* (the official organ of the denomination) as minister. On weekdays he acted as storekeeper for a brassfounder. He preached on Sundays and took a service on Tuesdays. There were no trustees, deacons, or committee. He claimed to be a regular minister of a religious denomination and exempt from military service within the exception in Sched. I., par. 4, of the Act of 1916.

Justices before whom he had been charged as an absentee were of opinion that the appellant was not a regular minister of any religious denomination; that he was elected only by a body of persons who were not named or defined and had no identity; that he was practically self elected and not actually responsible to any congregation, church, committee, or other body, and therefore was not within the exception nor exempt from service:—

Held, that although the question was one of degree in each case as it arose, yet on the

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evidence before them the justices were entitled to conclude that the appellant was not a regular minister of a religious denomination. **NOCK v. MALINS** - Div. Ct. 15 L. G. R. 799; 117 L. T. 602; 34 T. L. R. 3

Religious denomination — "Undenominational" church—Military Service Act, 1916 (5 & 6 Geo. 5, c. 104), Sched. I., par. 4.

The appellant, a baker and grocer, had since 1913 held the appointment of unpaid minister of the undenominational church at Curry Rivell, Somersetshire, and had since that time performed the duties of the office. The church was a religious body not belonging to any denomination, and there was no other church known by the same name in the United Kingdom. It had been founded some eight or nine years ago in connection with a religious movement conducted by faith mission workers. Members of the faith mission went about the country as "travelling evangelists," and these had, prior to the appellant's appointment, conducted the services. The building was not certified as a place of religious worship. The number of persons being church members was between fifty and fifty-five, including the older children. There was no register of members. There were no rules or regulations for the government of the church or its members.

The appellant claimed exemption from military service as being the regular minister of this church.

The justices were of opinion that the word "church," as applied to the body in question, connoted nothing more than the voluntary association of individuals for such religious purposes as were usually comprehended in the term "prayer meeting," or "Bible class." The word "undenominational" in conjunction with "church" was merely a descriptive term, having no other meaning than that the members attached to it; and the appellant was not a minister of a religious denomination:—

Held that, although the question was one of degree in each case, it was impossible to say that this body of persons was a religious denomination. On the evidence before them, the justices were entitled to conclude that the appellant was not a regular minister of a religious denomination under Sched. I., par. 4, of the Military Service Act, 1916. **KICK v. DONNE** - Div. Ct. 15 L. G. R. 498; 81 J. P. 191; 33 T. L. R. 325

Secular employment — Evidence — Military Service Act, 1916 (5 & 6 Geo. 5, c. 104), Sched. I., par. 4 — Military Service Act, 1916 (Sess. 2) (6 & 7 Geo. 5, c. 15), s. 1, sub-s. 1.

The fact that a man is in secular employment is not conclusive evidence that he is not also a regular minister of a religious denomination within the meaning of par. 4 of Sched. I. to the Military Service Act, 1916; and, where there is clear evidence that he is also devoting himself to the ministry of the members of a recognized religious denomination and is accepted by them as their regular minister, although without fixity of tenure as regards his appointment, the Court will quash a conviction by a Court of summary

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jurisdiction of his being an absentee from military service based on the ground that there was no evidence before the justices of his being such a minister.

Kipps v. Lane, 86 L. J. (K.B.) 735, followed on the question of secular employment.
OFFORD v. HISCOCK - Div. Ct. 86 L. J. (K.B.) 941; 15 L. G. R. 513; [1917] W. N. 326; 81 J. P. 179

Secular employment—Evidence—Military Service Act, 1916 (5 & 6 Geo. 5, c. 104), *Sched. I., par. 4.*

A person claimed exemption from military service under the Military Service Act, 1916, *Sched. I., par. 4*, as a regular minister of a religious denomination. He earned his living at a secular occupation. He had been elected several times annually with others, according to the rules of his denomination, to perform certain religious functions of religious teaching, or administering the rites of baptism, marriage, or burial for the members of the congregation. He had not received any special training for this position. He was not paid any salary:—

Held, that there was evidence upon which the justices were entitled to find that the appellant was not a regular minister, and not entitled to the exemption he claimed. *KIPPS v. LANE* - Div. Ct. 86 L. J. (K.B.) 735; 15 L. G. R. 265; 116 L. T. 95; [1917] W. N. 77; 33 T. L. R. 207; 81 J. P. 117

Rejection.

Attestation—Claim of right to affirm instead of taking oath—Refusal of recruiting officer to allow affirmation—Military Service Act, 1916 (5 & 6 Geo. 5, c. 104), *Sched. I., par. 6—Oaths Act, 1888* (51 & 52 Vict. c. 46), s. 1.

A person presenting himself for military service is entitled to make an affirmation instead of taking the oath. If a recruiting officer refuses to accept a man for enlistment because the man declares himself to be an atheist and wishes to affirm and will not take the oath, such refusal constitutes a rejection within *Sched. I., par. 6*, of the Military Service Act, 1916.
TOWLER v. SUTTON - Div. Ct. 86 L. J. (K.B.) 46; 14 L. G. R. 1154; 115 L. T. 836; 33 T. L. R. 27

Modification of—Restriction of modification to medical grounds—Military Service Act, 1916 (5 & 6 Geo. 5, c. 104), *Sched. I., par. 6—Military Service Act, 1916* (Sess. 2) (6 & 7 Geo. 5, c. 15), s. 3, sub-s. 2.

Par. 6 of the First Schedule of the Military Service Act, 1916, excepts from military service "men who have offered themselves for enlistment and been rejected since August 14th, 1915." *Sect. 3, sub-s. 2*, of the Military Service Act, 1916 (Sess. 2), enacts that "paragraph 6 of the First Schedule to the principal Act shall on the 1st day of September, 1916, cease to apply to a man who has offered himself for enlistment and been rejected since the 14th day of August, 1915, if the Army Council are satisfied that he should again present himself for medical examination. . . ."

The respondent on offering himself for

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enlistment in Jan., 1916, had been rejected, not for medical unfitness, but on another ground:—

Held, that s. 3, sub-s. 2, was confined to men rejected on medical grounds alone, and that the respondent, having been rejected on another ground, was entitled to claim the benefit of the exception in *par. 6* of the principal Act. The word "again" in sub-s. 2 refers to a class of men who have already been medically examined.

Towler v. Sutton (1916) 14 L. G. R. 1154 applied. *BLAKE v. DUNGOOR* - Div. Ct. 15 L. G. R. 843

Notice to join after—Motion for prohibition to military authorities from proceeding on the notice—Prohibition refused—Military Service Act, 1916 (5 & 6 Geo. 5, c. 104), s. 1, sub-s. 2 (a); *Sched. I., par. 6—Military Service Act, 1916* (Sess. 2) (6 & 7 Geo. 5, c. 15), s. 3, sub-s. 2.

The applicant had offered himself for military service, and had been rejected by the doctor. He did not receive a notice requiring him to present himself for medical re-examination. Notwithstanding this, he received from the military authorities a notice requiring him to present himself for service on a certain date. On motion for a rule nisi for a prohibition or other process to prevent the military authorities from proceeding further on the notice:—

Held, that the Military Service Acts, 1916, did not contemplate any such procedure as that followed by the military authorities, and that the matter would have to come before a civil Court if the military authorities proceeded to enforce the notice; but that the Court would not grant the rule nisi in anticipation of any action which the military authorities might take.
Ex parte BURNS - Div. Ct. 86 L. J. (K.B.) 158; 33 T. L. R. 23

Power of rejection—Exercise of, by recruiter—Person rejected since Aug. 14, 1915—Person charged with being absentee—Jurisdiction of one justice of the peace to commit to military custody—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 20, sub-s. 9—*Army Act, 1881* (44 & 45 Vict. c. 58), s. 154, sub-ss. 2, 3—*Military Service Act, 1916* (5 & 6 Geo. 5, c. 104), *Sched. I., par. 6—Regulations for Recruiting, 1912*, regs. 102, 103.

On Nov. 25, 1915, the appellant offered himself as a recruit, at the same time informing the recruiter that he had been rejected on Sept. 4, 1914. The recruiter, after referring to his records, wrote on the appropriate form "not accepted," signed the form, and handed it to the appellant:—

Held, that, as the recruiter made no kind of examination, he had not exercised the authority vested in him under reg. 102 of the Regulations for Recruiting, 1912; that the appellant was therefore not validly rejected and was not within the exception from military service contained in *par. 6* of the First Schedule to the Military Service Act, 1916.

On Apr. 5, 1916, the appellant was arrested by direction of the military authorities and charged before a justice of the peace with being an absentee from His Majesty's Forces, and the justice remanded him in custody to be dealt with

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by the military authorities without imposing any penalty :—

Held, that, assuming the case was one arising under a future Act within the meaning of s. 20, sub-s. 9, of the Summary Jurisdiction Act, 1879, it was within the words "otherwise prescribed" contained in the sub-section, and could therefore be dealt with by one justice of the peace, inasmuch as under s. 154, sub-s. 2, of the Army Act, 1881, a Court of summary jurisdiction could deal with the appellant as if he were charged with an indictable offence, and the justice could therefore commit him to military custody in the same way as he could have committed him for trial if he had been charged with an indictable offence. *WALDER v. TURNER* - Div. Ct. [1917] 1 K. B. 39; 14 L. G. R. 1094; 115 L. T. 550; 33 T. L. R. 1

Liability to Service.**Alien.**

See ALIEN, col. 10.

Russian subject—Application to return to Russia—Subsequent refusal to return—Right to apply to local tribunal—Military Service (Conventions with Allied States) Act, 1917 (7 & 8 Geo. 5, c. 26), s. 2.

A Russian subject resident in England, who has applied under the Military Service (Conventions with Allied States) Act, 1917, to be sent back to Russia, but who, on facilities being afforded him, has refused them and elected to remain in England, is in the same position as a British subject after the appointed day, and is not entitled to go before a Local Tribunal and require them to hear and determine his application for exemption from military service. *REX v. SPECIAL LOCAL TRIBUNAL FOR LONDON (RUSSIAN SUBJECTS)*. *Ex parte SPOLANSKY*

Div. Ct. 15 L. G. R. 850; [1917] W. N. 302

Notice to Join.

Defect in notice—Time and place—Evidence of knowledge—Reserve Forces Act, 1882 (45 & 46 Vict. c. 48), s. 15.

The appellant, who was liable to military service, received three calling-up notices, signed by a recruiting officer, and dated Jul. 18, 1917, requiring him to report for service on Jul. 24, but stating no place or hour at which he was to report. On receiving the notices the appellant handed them to his solicitor, who communicated with the recruiting officer. On Jul. 21 the recruiting officer informed the solicitor by letter as to the place at which the appellant was to report on Jul. 24. The appellant failed to report, and on his being summoned under s. 15 of the Reserve Forces Act, 1882, as an absentee he did not deny that he had notice of the time and place. The justices convicted the appellant. *GERHOLD v. DAY* - Div. Ct. 34 T. L. R. 69; 15 L. G. R. 934

Ordinarily Resident in Great Britain.

British subject formerly residing abroad—Animus revertendi—Military Service Act, 1916 (Sess. 2) (6 & 7 Geo. 5, c. 15), s. 1, sub-s. 1.

The appellant, whose parents were Dutch, was a natural-born British subject. He lived

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in England from the time of his birth in 1891 until 1903, when he went to Antwerp, living there until Aug., 1914, when he married a wife of Dutch extraction and furnished a house there. In Sept., 1914, owing to the German occupation of that city, he came to England, where he was shortly afterwards followed by his wife; and they resided in furnished apartments in London until May, 1917, when he was charged with, and convicted of, being an absentee under the Military Service Acts. The magistrate decided that, although the appellant might still have an animus revertendi to Belgium, he had been since Aug. 1915, or was for the time being, ordinarily resident in Great Britain within the meaning of s. 1, sub-s. 1, of the Military Service Act, 1916 (Sess. 2) :—

Held, on appeal, that there was evidence to support the decision. *REX v. DENMAN*. *Ex parte STALL* - Div. Ct. 86 L. J. (K. B.) 1328; 15 L. G. R. 644; 116 L. T. 600; 33 T. L. R. 440; 81 J. P. 217

Habeas corpus—Jurisdiction—Inferior Court—Detention—Military Service Act, 1916 (5 & 6 Geo. 5, c. 104), s. 1, sub-s. 2—Military Service Act, 1916 (Sess. 2) (6 & 7 Geo. 5, c. 15), s. 1, sub-s. 1.

The decision of an inferior Court upon a matter the decision of which is entrusted to that Court cannot be questioned by means of a writ of habeas corpus.

By s. 1, sub-s. 1, of the Military Service Act, 1916 (Sess. 2), every male British subject who is for the time being ordinarily resident in Great Britain and within certain specified limits of age is, with certain exceptions, deemed to have been duly enlisted in His Majesty's Forces and to have been transferred to the reserve.

By s. 1, sub-s. 2, of the Military Service Act, 1916, if any question arises in any legal proceeding under the Army Act and other statutes whether a man is a man who is under this section deemed to have been enlisted and transferred, the Court (in this case a magistrate) may require the man to give evidence on the question, and if satisfactory evidence is not given to the contrary the man shall be deemed to have been enlisted and transferred.

An Irishman who had temporarily got work in England was brought before a magistrate for failing to comply with an order calling him up from the reserve for permanent service. In pursuance of powers conferred upon him the magistrate handed him over to the military authorities as being a person who for the time being was ordinarily resident in Great Britain and as such deemed to be enlisted and transferred to the reserve. The military authorities detained him :—

Held, that a writ of habeas corpus would not lie to question the decision of the magistrate.

Reg. v. Bolton (1841) 1 Q. B. 66 applied. *REX v. THE COMMANDING OFFICER OF MOEN HILL CAMP, WINCHESTER*. *Ex parte FERGUSON* Div. Ct. [1917] 1 K. B. 176; 86 L. J. (K. B.) 410; 115 L. T. 927; 81 J. P. 73; 33 T. L. R. 47

Affirmed on appeal - C. A. 61 S. J. 367

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Habeas corpus—Jurisdiction of justices—Deserter—Military custody—Military Service Act, 1916 (5 & 6 Geo. 5, c. 104), s. 1—Army Act, 1881 (44 & 45 Vict. c. 58), s. 154—Reserve Forces Act, 1882 (45 & 46 Vict. c. 48).

To justify an order committing to military custody a person charged as a suspected deserter under the Army Act, 1881, c. 58, or charged as an absentee, being ordinarily resident in Great Britain on Aug. 15, 1915, under the Military Service Act, 1916, s. 1, the Court of summary jurisdiction must be satisfied that such person is a deserter or is so ordinarily resident. It is not enough that, without being itself satisfied of such fact, the Court should decide that there was a *prima facie* case proper for the consideration and decision of another tribunal:—

Held, that an order committing to military custody a person charged as an absentee under the Military Service Act, 1916, s. 1, was invalid, as the Court did not decide that it was satisfied as to such person being ordinarily resident in Great Britain on Aug. 15, 1916.

Held, also, that habeas corpus was an appropriate remedy for a person in military custody under such invalid order.

Quære: (1.) Whether an order committing to military custody can be made by a single magistrate under the Army Act, 1881, s. 154, or the Military Service Act, 1916, s. 1; (2.) As to the effect of an order committing to military custody in determining the status of the person charged; (3.) As to the form of such order.

Walder v. Turner [1917] 1 K. B. 39 and *Rex v. The Commanding Officer of Morn Hill Camp, Winchester. Ex parte Ferguson* [1917] 1 K. B. 176 discussed and distinguished. *Rex v. Jones* Div. Ct. (Ir.) [1917] 2 I. R. 7

Ordinarily resident in His Majesty's dominions abroad—Military Service Act, 1916 (5 & 6 Geo. 5, c. 104), Sched. I., par. 1—Military Service Act, 1916 (Sess. 2) (6 & 7 Geo. 5, c. 15), s. 1, sub-s. 1.

The appellant had been convicted before justices for failing to report himself after notice to join the colours and with being an absentee without leave from His Majesty's Forces. He appealed against this conviction to quarter sessions.

The appellant, born in England of British parents, had in April, 1901, gone to South Africa, where he established a business and resided continuously till May, 1914, when he came over to England to negotiate a loan in connection with a syndicate of which he was a member. In his absence his brother managed his business and his private residence was kept in readiness by his servants for his return at any moment. Owing to the outbreak of the war in Aug., 1914, the syndicate negotiations in England came to a standstill, but the appellant did not return to South Africa, and in Jun. 1915, married a lady in England, and resided continuously with her in a house bought with her money in Somersetshire. Since he and his wife did not intend to reside permanently in England this house was only partially furnished with articles belonging to the wife before marriage.

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In Oct., 1916, he received notice to join the colours. He refused to join upon the grounds that he was not ordinarily resident in Great Britain within the meaning of s. 1, sub-s. 1, of the Military Service Act, 1916 (Sess. 2); that he was ordinarily resident in one of His Majesty's dominions abroad, namely, South Africa, and therefore within the first clause of the exceptions in the First Schedule to the principal Military Service Act, 1916; alternatively that he was a person resident in Great Britain for a special purpose only, namely, for raising capital for the proposed syndicate, within the same exception.

The Court of quarter sessions, in stating a case for the opinion of the High Court, found that the appellant had at all material times ordinarily resided in England within the meaning of s. 1, sub-s. 1, of the Military Service Act, 1916 (Sess. 2); he had come to England for a special purpose, but had not at any time since the passing of the Act been resident in Great Britain for that or any other special purpose. He could have returned to South Africa whenever he pleased, but had no present intention of returning. Had he gone back to South Africa to attend to his business he would have had ample time to return to England to resume negotiations for the loan to the syndicate when prospects appeared likely to become favourable; but he had stayed in England for his own pleasure and convenience. Further, the justices were of opinion that the possession of a private residence abroad to which he might go at any time was not sufficient of itself to take the appellant out of the provisions of the Military Service Acts, 1916, and that in the circumstances the appellant was neither ordinarily resident in His Majesty's dominions abroad nor resident in Great Britain for a special purpose. The conviction was affirmed:—

Held, that there was abundant evidence upon which the Court of quarter sessions could arrive at the conclusion that the appellant was ordinarily resident in Great Britain and not ordinarily resident in South Africa, and that their decision dismissing the appeal must be supported. *PITTAR v. RICHARDSON*

Div. Ct. 15 L. G. R. 780; 116 L. T. 823;

[1917] W. N. 255; 81 J. P. 286

Tribunals.**Action in High Court.**

Calling-up notice—Claim to exemption—Statutory tribunal to determine question—"Civil court"—Writ in High Court for declaratory order—Jurisdiction—Army Act, 1881 (44 & 45 Vict. c. 58), s. 190, sub-ss. 31, 35—Military Service Act, 1916 (5 & 6 Geo. 5, c. 104), s. 1, sub-s. 2; Sched. I., par. 4—Military Service Act (Sess. 2), 1916 (6 & 7 Geo. 5, c. 15), s. 1, sub-s. 1.

The High Court is not a "civil court" within s. 1, sub-s. 2, of the Military Service Act, 1916, or s. 190, sub-s. 31, of the Army Act, 1881, and therefore an action in the High Court will not lie for a declaration that a man comes within one of the exceptions from military service

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under the Military Service Act. *FLINT v. ATT.-GEN.* - *Neville J.* [1917] W. N. 354; 34 T. L. R. 88; 62 S. J. 121

Appeal Tribunal.

Appeal from local tribunal—Duplicate notice of appeal to respondent—Omission to send notice by clerk of tribunal—Whether notice condition precedent—Military Service Act, 1916 (5 & 6 Geo. 5, c. 104), s. 2, sub-s. 2—Military Service Regulations (Amendment) Order, 1916, Part I., s. 2, reg. 19.

The duplicate notice of appeal required to be delivered by reg. 19 of s. 2 of Part I. of the Military Service Regulations (Amendment) Order, 1916, is not a condition precedent to the hearing of the appeal if the party to whom the notice ought to have been sent appears before the appeal tribunal knowing the case he has to meet, and his case is heard by the tribunal. *REX v. LEICESTERSHIRE APPEAL TRIBUNAL Ex parte TIVEY* - Div. Ct. 86 L. J. (K. B.) 807; 14 L. G. R. 1131; 115 L. T. 924; 81 J. P. 36

Appeal from local tribunal—Notice of, in prescribed form in duplicate not delivered—Jurisdiction of appeal tribunal—Military Service Act, 1916 (5 & 6 Geo. 5, c. 104), Sched. II.—Military Service (Regulations) Order, 1916, reg. 19.

On Feb. 23, 1916, a local tribunal granted the applicant total exemption from military service.

The military representative immediately announced in the presence and hearing of the applicant that he should appeal, at the same time stating his grounds. On Feb. 26, 1916, no copies of the prescribed form of notice of appeal being available, the military representative handed to the clerk of the local tribunal a list of the names of the persons in respect of whom he intended to appeal, including the name of the applicant; and some weeks before the appeal was heard the clerk discussed the matter with the applicant.

Notwithstanding an objection by the applicant that they had no jurisdiction to hear it, upon the ground that the prescribed notice had not been given, the appeal tribunal allowed the appeal:—

Held by Lord Reading C.J. and Avory J. (Low J. dissenting), that, inasmuch as the applicant knew within the prescribed time that the appeal was pending, strict compliance by the military representative with the letter of reg. 19 of the Military Service (Regulations) Order, 1916, by delivering to the local tribunal notice of appeal in the prescribed form in duplicate was not a condition precedent to the appeal tribunal having jurisdiction to hear and determine the appeal, and that therefore a rule nisi obtained by the applicant for a certiorari to bring up the order of the appeal tribunal to be quashed on the ground of want of jurisdiction must be discharged.

Observations upon the judicial character of military tribunals.

Held by the C. A., that the statute gave an absolute right of appeal; that the provisions of reg. 19 as to procedure were directory only

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and not imperative, and that non-compliance with them had not deprived the military representative of his right of appeal. *REX v. LINCOLNSHIRE APPEAL TRIBUNAL Ex parte STUBBINS* - C. A. [1917] 1 K. B. 1; 86 L. J. (K. B.) 292; 14 L. G. R. 1101; 115 L. T. 513; 33 T. L. R. 32; 80 J. P. 465

Certified Occupation—Absence of objection by military representative—Refusal of exemption—Military Service Regulations (Amendment) Order, 1916, Part I., s. 5, regs. 5, 6.

Where an application is made to an appeal tribunal for the renewal of a certificate of exemption granted by them the tribunal is for all purposes in the same position as the local tribunal, and the want of a notice that the military representative will dispute that the employee was in a certified occupation will not preclude the tribunal from considering whether they are satisfied that the employee is in such an occupation, and refusing the exemption if they are satisfied that his principal and usual occupation is not a certified occupation. *REX v. HAMPSHIRE APPEAL TRIBUNAL Ex parte HANDLEY* - Div. Ct. 86 L. J. (K. B.) 1463; 15 L. G. R. 180; 116 L. T. 92; [1917] W. N. 67; 81 J. P. 107

Certified occupation—Evidence—Questions of fact.

Upon the application of a tenant farmer an appeal tribunal refused a certificate of exemption to his son, notwithstanding that on the hearing of the appeal from the local tribunal no evidence was called in opposition to the appeal or to contradict the statements in the father's affidavit; and notwithstanding that the military representative did not contend that the son's principal and usual occupation was not in fact one of the certified occupations, or that it was no longer necessary in the national interests that he should continue in civil employment:—

Held, that since upon the evidence given the appeal tribunal had come to the conclusion that no case had been made out for exemption, it was unnecessary that evidence should be called in opposition, the application fell by its own weight, and that to issue a mandamus to the appeal tribunal to hear and determine would be to turn the Court into a C. A. from the decision of the appeal tribunal on questions of fact. *REX v. HOLLAND SECTION OF LINCOLNSHIRE APPEAL TRIBUNAL Ex parte EAST* - Div. Ct. 14 L. G. R. 1173; 86 L. J. (K. B.) 598; 81 J. P. 16

Military representative, Presence of in room where tribunal of appeal deliberate—Withdrawal of appellant.

The military representative cannot of right be present at the deliberations of a tribunal of appeal where the other party to the appeal has been directed to withdraw pending such deliberations. Nevertheless, if the other party raises no objection, and the military representative takes no part in the deliberations, the Court will neither grant a certiorari to quash the decision nor re-hear the appeal.

Per Curiam: The preferable practice would be that if the military representative remain in

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the room as a matter of convenience, being engaged in numerous appeals, the other party should also remain in the room. *REX v. GLAMORGANSHIRE APPEAL TRIBUNAL. Ex parte FRICKER* - Div. Ct. 15 L. G. R. 142; 115 L. T. 930; [1917] W. N. 27; 33 T. L. R. 152; 81 J. P. 85

Rehearing of application for exemption—Consent of Army Council—Military Service Act, 1916 (Sess. 2) (6 & 7 Geo. 5, c. 15), s. 4, sub-s. 5—Regulations of Tribunals under Military Service Acts, 1916, Part III., r. 2—Military Service (Amendment) Order, 1917, Part III., par. 2.

By s. 4, sub-s. 5, of the Military Service Act, 1916 (Sess. 2), "Regulations made under the Second Schedule of the principal Act may provide for permitting the rehearing of a case by a tribunal in cases specified in the Regulations." Rule 2 of Part III. of the Regulations for Tribunals under the Military Service Acts, 1916, contains a provision that the case "shall not be reheard after the man has joined the colours except with the consent of the Army Council": and by par. 3 of Part III. of the Military Service (Amendment) Order, 1917, it is added: "Provided also that the case shall not be reheard after a notice has been sent to a man calling him up for service":—

Held, in the case of a man, the rehearing of whose appeal had been refused by the appeal tribunal on May 31, 1917, who on Jun. 19 received notice to join the colours, but on Jun. 26 applied for a further rehearing, that upon reading the above Regulations together there could be no rehearing unless the consent of the Army Council be first obtained, the man having already been called up; and that where an appeal tribunal are of unanimous opinion that it is not in the national interest that a man so called up should continue in civil employment, and are not prepared to ask for the consent of the Army Council to rehear his appeal, no mandamus will be issued to them to rehear it. *REX v. HULL AND EAST RIDING APPEAL TRIBUNAL. Ex parte ROSEN* - Div. Ct. 15 L. G. R. 790; 117 L. T. 339; [1917] W. N. 282; 81 J. P. 308; 62 S. J. 24

Central Tribunal.

Appeal to—Oral refusal of leave—Leave subsequently given—Communication of decision in writing—Military Service Act, 1916 (5 & 6 Geo. 5, c. 104), Sched. II.—Military Service Regulations (Amendment) Order, 1916, Schedule, Part II., s. 1, reg. 10.

By the Military Service Act, 1916, Sched. II., "Any person aggrieved by the decision of an appeal tribunal . . . may, by leave of the appeal tribunal, appeal to the Central Tribunal." By the Military Service Regulations (Amendment) Order, 1916, Schedule, Part II., s. 1, reg. 10, "any party who is present when the decision of the appeal tribunal is given, may apply forthwith for leave to appeal to the Central Tribunal, and if the appeal tribunal decide the application and communicate their decision to the party in writing, it shall not be competent for him to make a further application":—

Held, that, where leave to appeal had been

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applied for at the close of proceedings before an appeal tribunal and had been orally refused, but the refusal had not been communicated in writing to the military representative, the tribunal were not precluded from subsequently giving him leave to appeal in writing. *REX v. CENTRAL TRIBUNAL FOR GREAT BRITAIN. Ex parte SYDDALL. REX v. SALFORD APPEAL TRIBUNAL. Ex parte SAME* - Div. Ct. 86 L. J. (K. B.) 1483; 15 L. G. R. 195; 86 L. J. (K. B.) 799; 116 L. T. 88; 33 T. L. R. 196; 81 J. P. 95

Appeal to—Refusal of leave by appeal tribunal—Mandamus—Military Service Act, 1916 (5 & 6 Geo. 5, c. 104), Sched. II.

The applicants applied to the County of London Appeal Tribunal for exemption of an employee from military service, and the exemption was refused.

The applicants then applied to the appeal tribunal for leave to appeal to the Central Tribunal for Great Britain, but the appeal tribunal refused to grant leave to appeal. By the Second Schedule to the Military Service Act, 1916, "Any person aggrieved by the decision of an appeal tribunal, and any person generally or specially authorised to appeal from the decision of that tribunal by the Army Council, may, by leave of the appeal tribunal, appeal to the central tribunal":—

Held, that a mandamus would not lie to the appeal tribunal to grant leave to appeal where they had heard the application and had determined to refuse it. *Ex parte TEBBITT BROTHERS* Div. Ct. 116 L. T. 85; 33 T. L. R. 195

Appeal to—Withdrawal by appeal tribunal of leave to appeal—Incoherent and nonsensical notice of appeal—Effect—Military Service Act, 1916 (5 & 6 Geo. 5, c. 104).

B. appealed to an appeal tribunal under the Military Service Acts against the refusal of a local tribunal to grant him exemption from military service. His appeal was dismissed, but the appeal tribunal granted him leave to appeal to the Central Tribunal. On being asked by the Central Tribunal to state their reasons for having given leave to appeal and to forward the papers, the appeal tribunal withdrew the leave. The chairman subsequently stated that the granting of the leave was not the considered decision of the tribunal, but that B. had become so excited when his appeal was dismissed that he (the chairman) told him that he could appeal to pacify and to get rid of him:—

Held, that, as the appeal tribunal had once granted B. leave to appeal, it had no power to withdraw it.

B.'s notice of appeal to the Central Tribunal was, as to the greater part, incoherent and nonsensical:—

Held, that, as some part of the notice showed B.'s reasons for wishing to appeal, that part should be given effect to, even though it was incumbered by a mass of nonsense. *REX v. YORKSHIRE APPEAL TRIBUNAL (NORTH RIDING OF). Ex parte BARKER* - Div. Ct. 86 L. J. (K. B.) 599; 14 L. G. R. 1186; 115 L. T. 864; 81 J. P. 23

ARMY (Military Service)—continued.**Local Tribunal.**

Alleged irregularity in proceedings—Mandamus—Military Service Regulations (Amendment) Order, 1916, Part I., s. 2, reg. 5.

W. applied to the Hendon Local Tribunal, under the Military Service Acts, for exemption from military service. The hearing of the application was adjourned. At the beginning of the adjourned hearing three members of the tribunal were present, that number constituting a quorum. W.'s solicitor proceeded to explain that he (W.) was absent, owing to a business engagement. During this explanation the fourth member of the tribunal arrived. All four members then remained until the end of the hearing of the case, when all agreed that the application should be refused. W. obtained a rule nisi for a mandamus directed to the tribunal on the ground that the fourth member of the tribunal, who was not present during the whole of the proceedings, voted on a question affecting the decision, contrary to reg. 5 of s. 2 of Part I. of the Military Service Regulations (Amendment) Order, 1916:—

Held, that the rule must be discharged, since the application was based on trumped-up grounds, and since the applicant had a right to appeal to an appeal tribunal against the decision of the local tribunal. **REX v. HENDON LOCAL TRIBUNAL. Ex parte WATSON**

Div. Ct. 86 L. J. (K. B.) 1256; 15 L. G. R. 616; 116 L. T. 572; 81 J. P. 212

Certified occupation—No notice of objection by military representative—Dismissal of application—Powers of tribunal—Military Service Regulations (Amendment) Order, 1916, Part I., s. 5, reg. 6.

Where a person claims exemption from military service on the ground that his principal and usual occupation is a certified occupation and that it is essential in the national interest that he should continue in it, it is the duty of the tribunal to satisfy themselves that he is in a certified occupation. Reg. 6 of s. 5 of Part I. of the Military Service Regulations (Amendment) Order, 1916, does not compel a tribunal to grant exemption where they are not satisfied on this point, although the military representative has not raised the question by the notice of objection to the exemption which he is entitled to give under the regulation. **REX v. GRIMSBY APPEAL TRIBUNAL. Ex parte DALEY**

Div. Ct. 86 L. J. (K. B.) 1253; 15 L. G. R. 173; 116 L. T. 90; [1917] W. N. 66; 81 J. P. 91

Jurisdiction—Waiver of objection.

Where a man who carries on business in two districts makes on his own behalf to the tribunal of one of the districts an application for exemption from military service and afterwards makes a similar application to the tribunal of the other district, and the first application is dismissed and the Crown with knowledge of the facts takes no objection to the jurisdiction of the other tribunal, the question of the jurisdiction of the last-named tribunal is waived, and a certificate of exemption

ARMY (Military Service)—continued.

granted by them is a good answer to a charge against the man of being an absentee. **LANGDON v. RICHARDS** - - Div. Ct. 33 T. L. R. 325

Misapprehension of applicant as to decision of tribunal—Mandamus to hear and determine—Military Service Act, 1916 (5 & 6 Geo. 5, c. 104), s. 2.

The applicant, a tailor, applied to the local tribunal for the exemption from military service of his manager and cutter, and the latter was granted exemption for two months. He misunderstood the decision, thinking that his application had been adjourned for that period. After the time had expired, and the man had received a calling-up notice, the applicant again went before the tribunal, having taken no steps within the period of exemption to obtain an extension of the exemption, nor having given any notice of appeal:—

Held, that the fact that the applicant had mistaken his rights was no ground for granting a mandamus to the tribunal to hear and determine the application. **REX v. WESTMINSTER LOCAL TRIBUNAL. Ex parte SMART** - Div. Ct. 86 L. J. (K. B.) 738; 15 L. G. R. 147; 116 L. T. 303; 81 J. P. 83

Separate applications by employee and by employers—Appeal by employers—Order on Appeal—Subsequent application to local tribunal by employee—Military Service Act (6 & 7 Geo. 5, c. 15), s. 4.

REX v. BOURNEMOUTH LOCAL TRIBUNAL. Ex parte WEST - Div. Ct. 15 L. G. R. 908; [1917] W. N. 335

ARRANGEMENT—Deed of.

See **BANKRUPTCY**, col. 59.

ARREARS—Annuity.

See **LIMITATIONS, STATUTES OF**, col. 254.

ARREST—Passenger.

See **MASTER AND SERVANT**, col. 274.

ARTICLES—Company.

See **COMPANY**, col. 85.

ASSESSMENT—Place of—Income tax—Profits arising from foreign possessions.

See **REVENUE**, col. 358.

ASSETS—Company—Winding up.

See **COMPANY**, col. 99.

—Donatio mortis causa.

See **DONATIO MORTIS CAUSA**, col. 149.

ASSIGNEE—Reversion—Right to sue on covenants in lease.

See **LANDLORD AND TENANT**, col. 249.

ASSIGNMENT—Chose in action.

See **CHOSE IN ACTION**, col. 82.

—Creditors, For benefit of.

See **BANKRUPTCY**, col. 59.

—Earnings—Present and future—Restraint on personal freedom—Illegality.

See **CONTRACT**, col. 107.

ASSIGNMENT—*continued*.

— Lease—Company.

See LANDLORD AND TENANT, col. 244.

— Life assurance—Policy.

See INSURANCE (LIFE), col. 204.

— Personality, Interest in—Mortgage—Notice to trustees of the fund.

See MORTGAGE, col. 282.

— Shares.

See EMERGENCY LEGISLATION, col. 160.**ASSIGNS**—Covenant by lessee for self and not to sub-let without lessor's consent.*See* LANDLORD AND TENANT, col. 244.**ASSOCIATION**—Benefits to members—Association intended to be permanent—Purpose obsolete—Surplus funds.*See* TRUST, col. 444.

— Memorandum of—Company.

See COMPANY, col. 92.**ASSURANCE**.*See* INSURANCE.**ATTESTING WITNESSES**—Lost will.*See* PROBATE, col. 334.**ATTORNEY, POWER OF**—Sale of land—Alien enemy.*See* ALIEN ENEMY, col. 20.**ATTORNEY-GENERAL**—Assent of—Legacies to charities—Probate action—Compromise.*See* WILL, col. 463.**AUCTION**—Sale by.*See* VENDOR AND PURCHASER, col. 148.**AUCTIONEER**—Authority—Not signed by—Statute of Frauds.*See* VENDOR AND PURCHASER, col. 149.**AUDIT**.*See* IRELAND, col. 219.**AUSTRALIA**.*Commonwealth*—*Alien Enemy*, col. 51.*Appeal to Privy Council*, col. 52.*Federal Customs Duty*, col. 52.*Income Tax*. *See* below, South Australia.*Insurance (Marine)*. *See* INSURANCE (MARINE).*Queensland*, col. 53.*South Australia*, col. 54.*Commonwealth*.*Alien Enemy*.

Declaration by Attorney-General that company was controlled by alien enemies—Action—Allowance of demurrer—Refusal of leave to appeal.

Under the Trading with the Enemy Act of the Commonwealth of Australia the Att.-Gen. for Australia made a declaration that the petitioning co. was managed or controlled or

AUSTRALIA (Commonwealth)—*continued*.

carried on for the benefit of persons who were of enemy nationality or were resident in an enemy country. The petitioners' affairs were thus brought to a standstill, and they brought an action against the Commonwealth and the Att.-Gen. in the High Court of Australia, alleging that the Act was ultra vires and denying that they were under enemy influence or control. The defendants demurred, and the High Court allowed the demurrer:—

Held, that leave to appeal to His Majesty in Council ought not to be granted. *THE WELLSBACH LIGHT CO. OF AUSTRALASIA, LD. v. THE COMMONWEALTH OF AUSTRALIA AND THE ATT.-GEN. FOR AUSTRALIA* - J. C. 33 T. L. R. 382

Appeal to Privy Council.

Competence—Limits of constitutional powers—High Court—Commonwealth of Australia Constitution Act, 1900 (63 & 64 Vict. c. 12), ss. 51 (xxxv.), 74.

By the Commonwealth of Australia Constitution Act, 1900, s. 51, "the Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to: . . . (xxxv.) Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State." By s. 74, "No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question, however arising, as to the limits inter se of the constitutional powers of the Commonwealth and those of any State or States, . . . unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council."

A Court constituted by the Commonwealth Parliament for the purposes defined by s. 51 (xxxv.) made, upon an application by a federation of builders' labourers' associations in different States, an award against the appellants as to wages and conditions of labour. The High Court discharged a rule nisi prohibiting further proceedings upon the award, holding that there was an industrial dispute extending beyond the limits of any one State, and refused to grant a certificate under s. 74 above mentioned:—

Held, that the decision of the High Court was one to which s. 74 applied, and that in the absence of a certificate an appeal to His Majesty in Council was not competent. *JONES v. THE COMMONWEALTH COURT OF CONCILIATION AND ARBITRATION AND OTHERS, AND ATT.-GEN. (AUSTRALIA) AND ANOTHER, INTERVENERS*

J. C. [1917] A. C. 528; 86 L. J. (P. C.) 145; 117 L. T. 225; [1917] W. N. 162; 33 T. L. R. 358

Federal Customs Duty.

"Chassis"—"Motor cars, lorries and waggons"—*Customs Tariff*, 1911 (No. 19 of 1911, Commonwealth), Sched. A, items 161, 380 A, 380 B.

The appellant in 1913 imported into Victoria from Germany a patent road train consisting of eleven vehicles. One vehicle (hereinafter called the driver's car) carried two petrol engines and

AUSTRALIA (Commonwealth)—continued.

an electric generator. From this generator power was supplied to electric motors carried by the driver's car, and, by cables, to electric motors carried by each of the ten other vehicles; the driver's car and the other vehicles were each driven by this means. The driver's car did not draw the other vehicles. The appellant contended that the vehicles were all "chassis of motor cars, lorries and waggons" within item 380 E of the Customs Tariff, 1911, Sched. A, and that he was accordingly only liable to pay duty at 5 per cent. ad valorem thereon; the respondent (the collector of customs) contended that the driver's car was within item 161 ("locomotives, traction and portable engines") and consequently dutiable at 25 per cent., and that the other vehicles were dutiable at 40 per cent. under item 380 A as "vehicles not elsewhere included":—

Held, that on the facts none of the vehicles came within item 380 E, but that they were all "vehicles not elsewhere included" within item 380 A.

Held, further, that as the schedule specified no rate of duty for "motor cars, lorries and waggons," a complete article of that description was dutiable under item 380 A, and that it should not be taxed under the items relating to its constituent parts; and that this was so although it was imported divided into its constituent parts for convenience of transit merely. **FALKNER v. WHITTON** - J. C. [1917] A. C. 106; 86 L. J. (P. C.) 78; 116 L. T. 68

Income Tax.

— Computation of profits.

See below, South Australia, col. 54.

Insurance (Marine).

See **INSURANCE (MARINE)**, col. 212.

Queensland.

Stamp duty—Agreement to transfer—Conveyance or transfer on sale—Equitable interest—Stamp Act, 1894 (58 Vict., No. 8, Queensland), s. 49; s. 54, sub-s. 1.

The Stamp Act, 1894, of Queensland imposes an ad valorem stamp duty upon "a conveyance or transfer on sale of any property." By s. 49, "conveyance on sale" includes every instrument . . . whereby any property or any estate or interest in any property, upon the sale thereof is transferred to, or vested in, a purchaser." By s. 54, sub-s. 1, "any contract or agreement . . . for the sale of any equitable estate or interest in any property shall be charged with the same ad valorem duty . . . as if it were an actual conveyance on sale of the estate, interest, or property . . ."

Upon the reconstruction of a co. it agreed with a new co., in consideration of the allotment of shares, that it should transfer to the new co. sundry lands, shares, live stock, plant, book debts, and the benefits of all pending contracts and consignments of goods and of all trade marks. The agreement did not appropriate the consideration to the various classes of assets, nor provide when they respectively should be transferred. Transfers were made and ad

AUSTRALIA (Queensland)—continued.

valorem duty, apportioned under s. 53, was paid in respect of the lands, shares, goodwill, and trade marks. The appellants claimed ad valorem duty upon the further assets referred to in the agreement, namely, the live stock and other chattels and the book debts and other choses in action:—

Held, that the agreement was not chargeable with ad valorem duty as it did not effect an immediate transfer of the assets, nor was it one for the sale of an equitable interest. **COMMISSIONERS OF STAMPS v. QUEENSLAND MEAT EXPORT CO.** - J. C. [1917] A. C. 624; 86 L. J. (P. C.) 202

Workers' compensation—Approval of insurance companies—Discretion of governor—Obligation of employer—Workers' Compensation Act, 1916 (6 Geo. 5, No. 35, Queensland), ss. 7, 8.

Upon the true construction of s. 7 of the Workers' Compensation Act, 1916 (Queensland), the Governor in Council has an absolute discretion whether or not to "approve that" a co. carrying on in Queensland the business of accident insurance may continue to carry it on. A co. is not entitled to approval as of right upon making the maximum deposit provided by s. 7, sub-s. 2. An employer who has obtained a policy from an approved co. is nevertheless under an obligation by s. 8 to obtain a policy from the Insurance Commr. **AUSTRALIAN ALLIANCE ASSURANCE CO. v. ATT.-GEN. FOR QUEENSLAND** - J. C. [1917] A. C. 537; 86 L. J. (P. C.) 151; 117 L. T. 387; 33 T. L. R. 439

South Australia.

Income tax—Company—Profits—Taxation Act, 1884 (46 & 47 Vict. No. 323, S. Austr.), s. 12, sub-s. 12.

The Taxation Act, 1884, of South Australia imposes an annual income tax in that State and provides by s. 12, sub-s. 12, that the taxable income of a co. shall be the profits divided together with profits carried to any reserved fund, or capitalized in any way.

A mining and smelting co. treated all its moneys, including shareholders' capital and borrowed money, as one common fund, accumulated stocks of metal not forming part of this fund until sold. All payments were made out of this fund without being appropriated to any particular source. During 1903 the co. sold a large accumulation of metal, upon which all production charges had been paid, and out of the proceeds and new produce paid off 80,000*l.* of debentures and 20,774*l.* of deposits, and erected new works at a cost of 16,007*l.* They further in 1903 wrote off for depreciation of works 22,469*l.*, that sum being in fact provided out of profits which the co. would have been entitled to divide:—

Held, that the co. was taxable for the year 1903 upon each of the amounts of 80,000*l.*, 20,774*l.*, and 16,007*l.* as profits capitalized, and upon the 22,469*l.* as profits carried to a reserved fund. **DAVIDSON v. COMM. OF TAXES** - J. C. [1917] A. C. 542; 86 L. J. (P. C.) 148; 117 L. T. 389; 33 T. L. R. 441

AUTHORITY—Manager—Bank.

See **BANK**, col. 56.

AWARD.

See **ARBITRATION** and **COMPENSATION**.

BAILMENT.

See **CONTRACT**, col. 105.

BANK—Cheque—“Fictitious or non-existing” payee—Intention of drawer—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 7, sub-s. 3.

On the strength of what subsequently proved to be a forged promissory note, the plts. sent by post a crossed cheque drawn by them in favour of M. or order for the amount of an advance. P. intercepted the cheque and brought it to the D. branch of the deft. bank, and, having indorsed it first as M. and next as P., received payment of the amount of the cheque.

In an action by the plts. against the deft. bank to recover the amount of the cheque as money had and received by them to and for the use of the plts. :—

Held, that the payee was not “a fictitious or non-existing person” within the meaning of s. 7, sub-s. 3, of the Bills of Exchange Act, 1882; that therefore the cheque could not be treated as payable to bearer; and that the plts. were entitled to judgment.

Vinden v. Hughes [1905] 1 K. B. 795 and *North and South Wales Bank, Ltd. v. Macbeth* [1908] 1 K. B. 13; [1908] A. C. 137 followed and applied. **TOWN AND COUNTY ADVANCE CO. v. PROVINCIAL BANK OF IRELAND, LD.**

Div. Ct. (Ir.) [1917] 2 I. R. 421

— Confirmed banker's credit.

See **SALE OF GOODS**.

Negligence—Customer—Cheque—Space for amount in words left blank—Mandate of customer—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 9, sub-s. 2; s. 20.

The plts., a business firm, had in their service a confidential clerk whose integrity they had no reason to suspect. It was the clerk's duty to fill in cheques for signature. The clerk presented to one of the partners in the plts.' firm for signature a cheque drawn in favour of the firm. There was no sum in words written on the cheque in the space provided for writing, and there were the figures “2.0.0.” in the space intended for figures. The partner signed the cheque. The clerk subsequently added the words “one hundred and twenty pounds” in the space left for words and wrote the figures “1” and “0” respectively on each side of the figure “2.” The clerk presented the cheque for payment at the deft. bank, with which the plts. kept an account, and obtained payment of 120*l.* out of the plts.' account :—

Held, that the mandate to the bank was to pay 2*l.* only; and that the signing of the cheque in the above circumstances did not constitute negligence such as to prevent the plts. from recovering from the bank the amount paid, less the 2*l.*

A customer owes a duty to his banker not to

BANK—continued.

mislead, but it is not broken by the customer drawing a cheque in such a manner as to afford another person an opportunity to commit a fraud and thus to mislead the banker.

Sect. 9, sub-s. 2, and s. 20 of the Bills of Exchange Act, 1882, as applicable to a cheque, discussed.

Young v. Grote (1827) 4 Bing. 253 commented on.

Judgment of Sankey J. [1917] 1 K. B. 363 affirmed. *MACMILLAN v. LONDON JOINT STOCK BANK, LD.* - C. A. [1917] 2 K. B. 439; 86 L. J. (K. B.) 1499; 117 L. T. 202; 22 Com. Cas. 364; [1917] W. N. 181; 33 T. L. R. 398; 61 S. J. 523

Negligence—Duty to advise customer as to investment—Authority of manager—Liability of bank—Parol representation as to credit—Statute of Frauds Amendment Act, 1828 (Lord Tenterden's Act) (9 Geo. 4, c. 14), s. 6.

The plt. in 1911 went to Canada on pleasure and stayed at Montreal with the general manager of the deft. bank, who gave him a letter of introduction to the branch managers asking them if he applied for assistance or advice to place themselves at his disposal. In 1912 he again visited Canada, seeking investments, and amongst other places went to V., where he called upon G., the defts.' branch manager, upon whose advice, as he alleged, he invested the sum of 25,000*l.* upon a mortgage to secure a loan to a Canadian co. who were customers and debtors of the bank. The advice alleged to have been given to the plt. by G. consisted of oral representations as to the credit of the co. and the merits of the investment. It was admitted that G.'s advice was honestly given. The co. having failed to pay either interest or principal, the plt. brought an action against the bank, claiming damages for negligence and breach of duty while acting as his bankers and advisers. There was evidence that the bank did not, and according to the law of Canada could not, advise as to investments, and it was admitted that G. had no general authority to do so :—

Held, that the letter of introduction addressed by the general manager to the branch managers did not give G. any special authority to advise the plt., and that in the absence of any such authority there was no breach of any duty to advise carefully, and therefore no negligence which rendered the bank liable.

Held, also, that the action was brought by reason of a representation or assurance as to the credit of the co., and as such representation or assurance was not in writing signed by the party to be charged therewith, as required by s. 6 of Lord Tenterden's Act, the action was not maintainable.

The application of s. 6 is not confined to fraudulent representations or representations such as would support an action of deceit.

Haslock v. Fergusson (1837) 7 Ad. & E. 86 and *Swann v. Phillips* (1838) 8 Ad. & E. 457 followed. *BANBURY v. BANK OF MONTREAL* C. A. [1917] 1 K. B. 409; 86 L. J. (K. B.) 380; 116 L. T. 42; [1916] W. N. 412; 33 T. L. R. 104; 61 S. J. 129

BANKRUPTCY.

Action. See below, *Trustee*.

Alien Enemy. See **ALIEN ENEMY**.

Bankrupt, col. 57.

Costs, col. 58.

County Court, col. 58.

Debt. See below, *Receiving Order*.

Deed of Arrangement, col. 59.

Discharge, col. 60.

Examination of Witnesses. See below, *Witnesses*.

Intervention by Trustee. See below, *Trustee*.

Marriage Settlement, col. 60.

Money-lender, col. 61.

Petitioning Creditor, col. 61.

Proof, col. 62.

Receiving Order, col. 62.

Secured Creditor, col. 63.

Stock Exchange. See above, *Deed of Arrangement*.

Trustee, col. 64.

Undischarged Bankrupt. See above, *Trustee*.

Witnesses, col. 64.

Action.

See below, *Trustee*, col. 64.

Alien Enemy.

- Company registered in England—British directors—Alien enemy shareholders—Right of proof.
See **ALIEN ENEMY**, col. 12.

Bankrupt.

- Action by.

See below, *Trustee*, col. 64.

Contracts made with—Order rescinding some only of contracts—Conditions necessary to make order inequitable—Co-ordination between contracts—Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 54, sub-s. 5.

By s. 54, sub-s. 5, of the Bankruptcy Act, 1914, "the Court may, on the application of any person who is, as against the trustee . . . subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the Court may seem equitable . . ."

In Mar., 1916, the applicants entered into a contract with the bankrupts to supply to the bankrupts certain cotton-cloth goods, and in Apr., 1916, into two further contracts to supply to them a different kind of cotton-cloth goods. At the date of the bankruptcy the applicants had made no delivery to the bankrupts under the contract of Mar., 1916, but they had made part deliveries to the bankrupts under both contracts of Apr., 1916, and 95*l.* was due and

BANKRUPTCY (Bankrupt)—continued.

owing from the bankrupts to the applicants in respect of those deliveries. Upon an application against the trustee in the bankruptcy for an order rescinding the three contracts:—

Held, that there must be some co-ordination between the three contracts in order to make it inequitable that the applicants should not be relieved from carrying out the contract of Mar., 1916, but that the two other contracts should be rescinded, and that the proper order was that the two contracts of Apr., 1916, should be rescinded, the applicants to prove for the sum of 95*l.*, but that as regarded the contract of Mar., 1916, there should be no order. *In re CASTLE (TRADING AS SCHLOSS BROTHERS)*

Horridge J. [1917] 2 K. B. 725

— Discharge.

See below, *Discharge*, col. 60.

Motion by trustee—Duty of bankrupt to attend and give evidence.

It is the duty of a bankrupt to assist his trustee during the bankruptcy, and to attend the Court and give evidence if so required. *In re FITZGERALD Ex parte HOBBS*

Horridge J. [1916] H. B. R. 157

Costs.

See below, *Deed of Arrangement*, col. 59, and *Proof*, col. 62.

County Court.**Appeal.**

In the Divisional Court the parties are entitled to a copy of the county court registrar's notes for use on the hearing of an appeal. It is therefore the duty of registrars to supply a copy of their notes on application. *PRACTICE NOTE* - - - Div. Ct. [1916] H. B. R. 166

Matter properly triable in—Application by official receiver to county court judge to make order requesting High Court to act in aid of county court—Jurisdiction of county court judge to make order—Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 122.

Sect. 122 of the Bankruptcy Act, 1914, which enacts that every British Court having jurisdiction in bankruptcy shall act in aid of each other, was passed to enable one Court to assist another in dealing with matters which were within the jurisdiction of the Court asked to act, but not to enable a matter proper to be dealt with by the requesting Court to be sent for trial by another Court.

The official receiver and trustee under a composition approved by the Court having rejected the appellants' proof of a debt due in respect of moneys advanced to the debtor upon four bills of exchange the appellant gave notice of appeal to the county court against the rejection of the proof. The official receiver gave notice that he intended to apply to the county court judge for an order asking the High Court of Justice in Bankruptcy to act in aid of and be auxiliary to the county court so as to enable the appeal to be heard before the judge in bankruptcy in London instead of by the county court. In support of the application he reported to the county court (*inter alia*) that

BANKRUPTCY (County Court)—continued.

the circumstances leading up to the debt were of an intricate and peculiar nature. The county court judge made the order. On appeal to the Div. Ct. :—

Held, that, as it was quite within the competence of the county court judge to determine the appeal, he had no jurisdiction under the section to make the order, that, even if he had the power, there was no ground for making it. *In re MARQUIS OF HUNTLY. Ex parte GOLDSTEIN* - - Div. Ct. [1917] 2 K. B. 729

Debt.

See below, Receiving Order, col. 62.

Deed of Arrangement.

Stock Exchange—Defaulting member—Operation of Stock Exchange Rules—Official assignee—“Assignment for benefit of creditors”—Deed of arrangement—Non-registration—Supervening bankruptcy of member—Rights of trustee in bankruptcy—Deeds of Arrangement Act, 1887 (50 & 51 Vict. c. 57), ss. 4, 5—Deeds of Arrangement Act, 1913 (3 & 4 Geo. 5, c. 34), ss. 37, 42.

The application for admittance to membership of the Stock Exchange, coupled with the Rules of the Stock Exchange and the member's notice of default, operate as an assignment of his property for the benefit of his Stock Exchange creditors, which is a deed of arrangement within the definitions in s. 4 of the Deeds of Arrangement Act, 1887, as extended by s. 37 of the Deeds of Arrangement Act, 1913, and such an assignment, not being registered, is void. Therefore the trustee in bankruptcy of the defaulter is entitled to the assets collected by the official assignee of the Stock Exchange, even although the bankruptcy does not supervene until more than three months after the date of the notice of default.

So *held* by the C. A., affirming the decision of *Horridge J.* [1916] 2 K. B. 902. *In re HALSTEAD. Ex parte RICHARDSON* - C. A. [1917] 1 K. B. 695 ; 86 L. J. (K. B.) 621 ; [1917] H. B. R. 60 ; 116 L. T. 386 ; [1917] W. N. 47 ; 33 T. L. R. 191

Supervening bankruptcy—Trustee of deed of Arrangement—Costs of trustee—“Expenses properly incurred”—Deeds of Arrangement Act, 1914 (4 & 5 Geo. 5, c. 47), s. 21.

Where a deed of arrangement is superseded by the bankruptcy of the debtor, the expenses of the trustee of the deed, which are by s. 21 of the Deeds of Arrangement Act, 1914, a first charge on the debtor's estate, are strictly limited to those incurred by him in the performance of the duties specifically imposed on him by the Act. The section gives him no lien in respect of other matters where no lien existed before the Act, but he may be allowed reasonable compensation for other services rendered by him whilst trustee of the deed which have resulted in benefit to the estate. *In re GEEN. Ex parte PARKER* - - *Horridge J.* [1917] 1 K. B. 183 ; 86 L. J. (K. B.) 175 ; [1917] H. B. R. 20 ; 115 L. T. 837 ; [1916] W. N. 378

BANKRUPTCY—continued.**Discharge.**

Discretion of Court—Agreement by trustee in bankruptcy with debtor to dissuade creditors from objecting to application for discharge—Purchase of debts on debtor's behalf at unequal rates by friend of debtor—Privity of debtor—Creditors unaware of facts—Suspension of discharge.

A debtor was adjudicated bankrupt on May 15, 1914, his debts amounting to over 3500*l.*, and there being practically no assets. Since his adjudication he had entered into the service of a co., and was in receipt of a salary of 1200*l.* a year. On Apr. 20, 1916, he entered into an agreement with his trustee in bankruptcy to pay 360*l.* a year by monthly instalments out of his salary until his debts should be paid in full. The trustee agreed that when these payments should have amounted to a sufficient sum to pay the creditors 5*s.* in the pound no objection would be raised by him, and he would use his best endeavours to prevent any objections by any creditors to any application for an order of discharge or annulment ; 300*l.* had been paid under this agreement. A brother-in-law of the bankrupt, with his consent and privity, had on his behalf bought up the claims to the extent of 1000*l.* of certain creditors, who were unaware of the facts, at rates varying from 10*s.* to 2*s.* 6*d.* in the pound, and had withdrawn as against the estate all claims in respect of the assigned debts. The official receiver reported that the bankrupt's assets were insufficient to pay 10*s.* in the pound, that he had omitted to keep proper books of account, and that he had continued to trade after knowing himself to be insolvent. Under these circumstances the registrar suspended the bankrupt's discharge for two years. On appeal by the bankrupt :—

Held, that the agreement by the trustee binding himself, at the instance of the bankrupt, to prevent any objection by the creditors to an order of discharge was most improper. The purchase of the debts from individual creditors at different prices, without the fullest possible disclosure to them of every material fact, was a most dangerous proceeding. There was ample material to justify the registrar in suspending the order of discharge. *In re SHAW* - - C. A. [1917] 2 K. B. 784 ; 86 L. J. (K. B.) 1395 ; 117 L. T. 425 ; [1917] W. N. 233

Examination of Witnesses.

See below, Witnesses, col. 61.

Intervention by Trustee.

See below, Trustee, col. 64.

Marriage Settlement.

After-acquired property—Covenant to settle—Estate or interest at date of settlement under revocable appointment—Subsequent revocation and new appointment—Bankruptcy Act, 1913 (3 & 4 Geo. 5, c. 34), s. 13—Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 42, sub-s. 2.

The settlor at the date of his marriage was entitled in remainder to one tenth share of trust

BANKRUPTCY (Marriage Settlement)—*contd.*

funds comprised in two indentures of settlement under a revocable appointment by his father and mother made in pursuance of a special power of appointment, and was also entitled in remainder to a sum of 1500*l.* raisable out of the trust funds (subject to a hotchpot provision) under a similar but irrevocable appointment. By the settlement made on his marriage the settlor purported to assign to trustees the said sum of 1500*l.* and "all that the tenth part or share, or other the part or share, parts or shares, to which he now is or eventually may become or be entitled of or in the trust property" comprised in the two indentures of settlement upon trusts in favour of the settlor, his wife, and children of the marriage. His father and mother afterwards revoked the appointment of the one tenth share and instead thereof revocably appointed to the settlor in remainder one ninth share of the trust funds, and his mother (who had survived his father) afterwards revocably appointed to him in remainder another one ninth share. She died in 1913 without having revoked either of the last two appointments. The settlor became bankrupt in 1914, and subject to the hotchpot provision his trustee in bankruptcy claimed these shares (which were still in the hands of the trustees of the two indentures of settlement) under the Bankruptcy Act, 1913, s. 13, which enacted that any covenant or contract made by a settlor in consideration of his or her marriage for the future settlement on or for the settlor's wife or husband or children "of property wherein the settlor had not at the date of the marriage any estate or interest, whether vested or contingent, in possession or remainder," shall, if the settlor is adjudicated bankrupt and the covenant or contract has not been executed at the date of the commencement of his bankruptcy, be void as against the trustee in bankruptcy:—

Held, that, as to the amount of the one tenth share in which the settlor had an interest at the date of his marriage, the settlement was unaffected by the bankruptcy enactment notwithstanding that that amount ultimately reached the trustees under a different title, but that, as to the difference in amount between the one tenth and first appointed one ninth share and as to the secondly appointed one ninth share, the settlement was void as against the trustee in bankruptcy. *In re BULTEEL'S SETTLEMENTS*.

BULTEEL v. MANLEY - - - Younger J.
[1917] 1 Ch. 251; 86 L. J. (Ch.) 294;
116 L. T. 117; [1916] W. N. 416

Money-lender.

See below, Proof, col. 62, and Receiving Order, col. 62.

Petitioning Creditor.

Corporation—General authority to officer to present petition—Act of bankruptcy committed after date of authority—Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 149.

Under s. 149 of the Bankruptcy Act, 1914, an incorporated company may by resolution under seal give a general authority to one of its officers to present petitions in bankruptcy in C.O.D.

BANKRUPTCY (Petitioning Creditor)—*contd.*

the future in respect of acts of bankruptcy which may not have been committed at the date when the authority is given.

In re a Debtor [1915] 1 K. B. 287 explained and distinguished. *In re A Debtor* (No. 28 of 1917). *Ex parte THE PETITIONING CREDITORS v. THE DEBTOR* - - - Div. Ct. [1917] 2 K. B. 808; [1917] W. N. 269

See below, Receiving Order, col. 62.

Proof.**Costs.**

The question of allowing costs of proof is in all cases a matter of discretion. *In re O'B.*

Pim J. (Tr.) [1917] 2 I. R. 354

Rejection—Money-lender—Official receiver acting as trustee—Rejection in part of proof on ground that transaction harsh and unconscionable—Exercise by Court in considering rejection of powers conferred by Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 1, sub-s. 3.

When an official receiver acting as a trustee in bankruptcy has rejected, in part, a proof on the ground that the transaction was harsh and unconscionable within the meaning of the Money-lenders Act, 1900, the Court in considering such rejection will exercise the powers conferred by s. 1, sub-s. 3, of the Act. *In re MACKENZIE* - Horridge J. [1917] 2 K. B. 728

Rejection—Particulars—Allegation that bills affected with fraud—Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), Sched. II., s. 23.

The trustee under a scheme of arrangement rejected a proof in respect of certain bills lodged by one Isaac Goldstein. The material grounds were stated as follows: "(4.) That the acceptance issue and negotiation of each of the said bills was affected with fraud," and "(7.) That you took the said bills with knowledge that neither J. M. G. J. nor S. G. had any rights thereto." Goldstein asked for particulars of the fraud alleged in paragraph 4, and particulars of the creditor's knowledge. The county court judge held that he had no power to order particulars, whereupon Goldstein appealed.

The Div. Ct. allowed the application for particulars so far as related to the allegation under paragraph 4 of the grounds of rejection, but not those asked for under paragraph 7. They added that it must not be taken that the Court would grant applications for particulars as of right in every case where a trustee rejected a proof. The Court would consider each case and see whether the trustee had properly stated his grounds of rejection. *In re A Debtor* (No. 3 of 1909). *Ex parte GOLDSTEIN v. COX*

Div. Ct. [1917] W. N. 314; 61 S. J. 71

—Secured creditor.

See below, Secured Creditor, col. 63.

Receiving Order.

Money-lender—Debt—Final judgment—Petition for receiving order—"Harsh and unconscionable transaction"—"Excessive interest"—Power of Court to reopen transaction—Good petitioning creditor's debt—Right to receiving order—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 1, sub-s. 1, 3—Bankruptcy Act, 1883

BANKRUPTCY (Receiving Order)—continued.
(46 & 47 Vict. c. 52), s. 4, sub-s. 1 (g); s. 5; s. 6, sub-s. 1; s. 109.

A money-lender who had advanced money to the debtor, part of which she had repaid, recovered judgment against her by default for the balance of principal and interest which he claimed to be due. She paid further sums in reduction of the debt, and he served her with a bankruptcy notice in respect of the balance due under the judgment. The creditor then presented a bankruptcy petition founded upon non-compliance with the notice, the validity of which was not disputed. On the hearing of the petition the debtor disputed the debt, and claimed relief under the Money-lenders Act, 1900, on the ground that the transactions between the petitioning creditor and herself were "harsh and unconscionable." The registrar held that to be established, and he fixed, as the amount properly due to the creditor, a sum considerably in excess of 50*l*. He, however, refused to make a receiving order, but adjourned the petition with leave to the creditor to amend and re-present it in order to give the debtor an opportunity of discharging the debt:—

Held, that the registrar had power, on the petition, to reopen the transaction under the Money-lenders Act, but that having found there was a good petitioning creditor's debt, namely, a debt exceeding 50*l*, he was bound to make a receiving order, and that his order adjourning the petition was not a judicial exercise of his discretion against which there was no appeal.

In re a Debtor [1903] 1 K. B. 705 discussed and applied. *In re a Debtor* (No. 686 of 1916). *Ex parte THE PETITIONING CREDITOR* - C. A. [1917] 2 K. B. 60; 83 L. J. (K. B.) 745; [1917] H. B. R. 123; 116 L. T. 581; [1917] W. N. 85

Secured Creditor.

Proof for part only of debt secured—Vote in respect of debt proved—Surrender of security to extent of whole debt secured—Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), *Sched. I., clause 10.*

By clause 10 of *Sched. I.* to the Bankruptcy Act, 1914, "For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security . . . and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence."

At the first meeting of creditors a creditor of the bankrupt proved for a debt of 1113*l*. without stating the particulars of or valuing a deed of indemnity and mortgage which covered not only the debt of 1113*l*, but all moneys which might become owing by the debtor to him, and voted in respect of the proof for the 1113*l*. At the time the creditor voted the debtor was in fact indebted to him in further sums, and the creditor was entitled to prove also for his contingent liability as a surety for the bankrupt on bills for a considerable amount on which he had placed

BANKRUPTCY (Secured Creditor)—continued.

his name. All these matters were covered by the mortgage. The judge was not satisfied that the omission to value the mortgage had arisen from inadvertence:—

Held, that the creditor, by voting in respect of the debt he had proved, must be deemed under clause 10 to have surrendered the mortgage, not only to the extent of the 1113*l*, but to the extent of the whole liability of the bankrupt to him, and that the mortgage must be cancelled so far as it consisted of a security on the property of the bankrupt for debts to become due from him to the creditor.

The words "whole debt" in clause 10 mean the debt for which the creditor has proved. *In re PAWSON* Horridge J. [1917] 2 K. B. 527; 86 L. J. (K. B.) 1285; [1917] H. B. R. 87; 117 L. T. 315

Stock Exchange.

—Defaulting member—Operation of Stock Exchange Rules—Official assignee. *See above, Deed of Arrangement, col. 59.*

Trustee.

—Documents in solicitors' hands after bankruptcy. *See SOLICITOR, col. 423.*

Undischarged bankrupt—Intervention by trustee—Effect on vesting of after-acquired property—Action commenced by bankrupt—Application by defendant to stay—Withdrawal of intervention—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 44, 54—*Bankruptcy Act, 1914* (4 & 5 Geo. 5, c. 59), ss. 18, 38, 47; s. 48, sub-s. 5; ss. 53, 54.

Where a trustee in bankruptcy has intervened in regard to after-acquired property of an undischarged bankrupt, that property vests indefeasibly in the trustee, and he cannot subsequently withdraw his intervention and so divest the property from himself and re-vest it in the bankrupt.

Decision of Eve J. [1917] 1 Ch. 105 reversed. Sect. 47 of the Bankruptcy Act, 1914, is a statutory recognition of the proposition laid down in *Cohen v. Mitchell* (1890) 25 Q. B. D. 262. *HILL v. SETTLE* - C. A. [1917] 1 Ch. 319; 86 L. J. (Ch.) 243; [1917] H. B. R. 23; 116 L. T. 263; [1917] W. N. 19; 33 T. L. R. 168; 61 S. J. 217

Undischarged Bankrupt.

See above, Trustee, col. 64.

Witnesses.

Information respecting the dealings of the debtor—Holder of bills accepted by debtor—Application to rescind order—Appeal—Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 25, sub-s. 1; s. 108, sub-s. 1.

By s. 25, sub-s. 1, of the Bankruptcy Act, 1914, the Court may, on the application of the official receiver or trustee, at any time after a receiving order has been made against a debtor, summon before it any person whom the Court may deem capable of giving infor-

BANKRUPTCY (Witnesses)—continued.

mation respecting the debtor, his dealings or property.

By s. 16, sub-s. 17, if under a composition or scheme a trustee is appointed to administer the debtor's property or to distribute the composition, s. 25 of the Act shall apply as if the trustee were a trustee in a bankruptcy.

By s. 108, sub-s. 1, every Court having jurisdiction in bankruptcy under the Act may review, rescind or vary any order made by it under its bankruptcy jurisdiction.

A receiving order having been made against a debtor, a scheme of arrangement was submitted and accepted, the receiving order was rescinded, and the official receiver became the trustee under the scheme. A proof was lodged by a creditor who was the holder of certain bills of exchange drawn upon and accepted by the debtor and indorsed to a third person who transferred them for value to the creditor.

On the application of the official receiver under s. 25, sub-s. 1, an order was made by a county court for the examination of the creditor. There was no evidence that he was capable of giving any information respecting the debtor, his dealings or property:—

Held, that an order for his examination could not properly be made under the section.

Under s. 108, sub-s. 1, the creditor applied to the county court to rescind its order. That Court refused the application. On appeal to the Div. Ct. against this refusal:—

Held, that the creditor had taken the proper course in applying to rescind the order, and that the order must be rescinded.

Dicta in In re Gold Co. (1879) 12 Ch. D. 77 and *In re North Australian Territory Co.* (1890) 45 Ch. D. 78 considered. *In re A Debtor* (No. 3 of 1900). *Ex parte GOLDSTEIN*

Div. Ct. [1917] 1 K. B. 558; 86 L. J. (K. B.) 705; 116 L. T. 379

"BARE TRUSTEE."

See TAIL, TENANT IN, col. 429.

BARMOTE COURT—High Peak mining customs.

See MINES, col. 277.

BASIS OF CONTRACT—Statement forming—Insurance.

See INSURANCE (BURGLARY), col. 201.

BASTARDY — Corroboration — Evidence of opportunity—*Bastardy Laws Amendment Act*, 1872 (35 & 36 Vict. c. 65), s. 4.

On the hearing of a bastardy summons evidence of mere opportunity is not sufficient corroboration of the evidence of the mother to satisfy s. 4 of the Bastardy Laws Amendment Act, 1872. *BURBURY v. JACKSON* - Div. Ct.

[1917] 1 K. B. 16; 86 L. J. (K. B.) 255; 115 L. T. 713; [1916] W. N. 348; 25 Cox, C. C. 555; 80 J. P. 455; 33 T. L. R. 18

BECHUANALAND.

See SOUTH AFRICA, col. 424.

BEERHOUSE—Water—Supply.

See WATER, col. 454.

BELLIGERENT'S RIGHTS—Fraud on.

See PRIZE COURT, col. 328.

BENEFICE—Inadequate performance of ecclesiastical duties of.

See ECCLESIASTICAL LAW, col. 151.

"BENEVOLENT OBJECTS."

See CHARITY, col. 80.

BEQUEST.

See WILL.

BIGAMY—Foreign marriage—Expert evidence.

See CRIMINAL LAW, col. 129.

BILL OF COSTS.

See SOLICITOR, col. 420.

BILL OF EXCHANGE—*Negotiability—Unconditionality.*

The person who buys from the seller of goods an unaccepted draft upon the buyer of the goods with the bill of lading attached, and who forwards the documents with a request that the draft be accepted, incurs a liability under English law to the buyer of the goods who accepts the draft and pays it on maturity if it turns out that the bill of lading is a forgery.

Such a draft is by English law unconditional and is a negotiable instrument.

A draft drawn in America on the buyer of goods by the seller for the price of goods contained in the margin the date of the sale contract and a reference to the quality of the goods sold and had in the body of it a statement that it was for value received and that the amount was to be charged to the account of the particular goods referred to in the bills of lading. The draft was purchased in America and was sent by the purchaser thereof to the buyer of the goods in England with the bill of lading attached and was accepted by the buyer of the goods and paid by him on maturity. The bill of lading afterwards turned out to be a forgery:—

Held, that the question whether the draft was a negotiable instrument or a conditional order of assignment of a fund must be decided by American law, and that on the evidence as to such law the buyer of the draft incurred in the above circumstances no liability to the acceptor who paid the draft on maturity. *GUARANTY TRUST CO. OF NEW YORK v. A. HANNAY & Co.* - *Bailhache J.* 33 T. L. R. 553

BILL OF LADING.

See PRIZE COURT and SHIPPING.

BILL OF SALE—*Absolute bill*—"Apparent possession" of grantor—*Seizure of chattels in execution within seven days of making of bill of sale*—*Bill not registered*—*Bills of Sale Act*, 1878 (41 & 42 Vict. c. 31), s. 8.

An absolute bill of sale, within the Bills of Sale Act, 1878, was made on May 15, 1915, and on May 18 the chattels comprised therein were seized in execution by the sheriff. The bill of sale was not registered at any time. The county court judge found as a fact that the chattels were in the apparent possession of the grantor of the bill of sale.

On appeal to the Div. Ct. it was contended

BILL OF SALE—*continued*.

(the point had not been taken in the county court) that the seizure of the chattels in execution prevented them being in the apparent possession of the grantor of the bill of sale, and that, under s. 8 of the Bills of Sale Act, 1878, inasmuch as the execution was put in before the expiration of the seven days allowed for registration, the bill of sale, though unregistered, was not void as against the execution creditor. The Div. Ct. held that, notwithstanding the execution, the chattels comprised in the bill of sale were in the apparent possession of the grantor, and the bill of sale, being unregistered, was void against the execution creditor:—

Held, by the C. A., that the point, not having been raised in the county court, could not be taken on appeal, but there being evidence on which the county court judge could find as a fact that the chattels were in the apparent possession of the grantor, his finding could not be disturbed. **SALES AGENCY, LD. v. ELITE THEATRES.** ROSE, CLAIMANT - - C. A.
[1917] 2 K. B. 164; 86 L. J. (K. B.) 1060;
117 L. T. 6

"Condition" — Registration — Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 10, sub-s. 3.

The deft. agreed to lend the plt. 60*l.* upon the security of a bill of sale over her furniture. The deft.'s representative thereupon took an inventory of the furniture, and asked the plt. for 30*s.*, stating that the matter could not go through unless the plt. paid him that amount. The plt., in order to get the matter through, gave him a cheque for 30*s.*, it being arranged that the cheque should not be cashed until the advance had been made. The bill of sale was subsequently executed to secure the sum of 60*l.* and interest, and the 60*l.* was paid in cash to the plt. The bill of sale contained no statement as to the payment of the 30*s.*:—

Held, that the payment of the 30*s.* was not a "condition" subject to which the bill of sale was made or given within the meaning of s. 10, sub-s. 3, of the Bills of Sale Act, 1878, and that therefore it was not necessary that it should be contained in the body thereof or written on the same paper or parchment therewith before registration; and that the bill of sale was not on that account void. **GRAHAM v. HART** - C. A.
[1917] 1 K. B. 201; 86 L. J. (K. B.) 111;
115 L. T. 659

BILLS OF EXCHANGE ACT, 1882.

See BANK, col. 55.

BLANK TRANSFER—Shares.

See COMPANY, col. 96.

BLASPHEMY — Anti-Christian company —

Capacity to receive gifts.

See COMPANY, col. 92.

BONA VACANTIA.

See TRUST, col. 444.

BONDS — German Government—Seizure from letter mail.

See PRIZE COURT, col. 324.

BONUS—Seaman.

See SHIPPING, col. 418.

—Shares.

See CAPITAL OR INCOME, col. 77.

COUNTY—Prize.

See PRIZE COURT, col. 329.

BREACH—Charterparty.

See SHIPPING, col. 408.

—Condition—Waiver.

See SALE OF GOODS, col. 377.

—Covenant.

See LANDLORD AND TENANT, col. 244.

—Warranty—Claim for—Price of goods sold—

Defence—Set-off.

See COUNTY COURT, col. 120.

BRIBE—Purchaser—Vendor's agent.

See SOLICITOR, col. 423.

BRICKWORKS — Land purchased for—Undeveloped land duty.

See REVENUE, col. 363.

BRINE—Duty on rental value of—Right to work.

See REVENUE, col. 362.

BRITISH COLUMBIA.

See CANADA, COMPANY AND CORPORATION (MUNICIPAL).

BRITISH SUBJECT.

See ALIEN, col. 11, and EMERGENCY LEGISLATION, col. 161.

BUILDING—Agreement.

See CONVERSION, col. 115.

Contract—Construction—Provisional item—Employment of specialist by building contractor—Liability of building owner to specialist.

A builder contracted with a county council to build a school in accordance with the specifications and directions of the council's architect for a lump sum of 13,600*l.* The specification contained certain provisional items, including the following:—"Provide the sum of 450*l.* for a low pressure heating apparatus." A hot water engineer submitted a scheme to the architect for the heating of the school for 391*l.*, and by the direction of the architect this scheme was accepted by the builder. During the progress of the work the builder paid to the engineer 200*l.* on account, but he was unable to pay the balance. In an action by the engineer against the council as building owners for payment of the balance of his account:—

Held, upon the construction of the building contract, that the builder was to erect the school for a lump sum, including, if required, the heating apparatus up to a cost of 450*l.*, and that the builder, in employing a specialist to put up the heating apparatus, was acting as a principal and not as the agent of the building owners; and that the action failed.

Crittall Manufacturing Co. v. London C. C. (1910) 75 J. P. 203, observed upon by Lord Shaw of Dunfermline.

BUILDING—*continued*.

Decision of the C. A. affirmed. *HAMPTON v. GLAMORGAN C. C.* - H. L. (E.) [1917] A. C. 13; 86 L. J. (K. B.) 166; 15 L. G. R. 1; 115 L. T. 726; [1916] W. N. 374; 33 T. L. R. 53; 31 J. P. 41

— Lease.

See SOLICITOR, col. 421.

— Line—London.

See LONDON, col. 265.

— Notice—London.

See LONDON, col. 264.

BURDEN OF PROOF—Insurance.

See INSURANCE (BURGLARY), col. 201.

BURGLARY—Insurance.

See INSURANCE (BURGLARY), col. 201.

BUSINESS—Remuneration of person concerned in—Express profits duty—Manager.

See REVENUE, col. 356.

BUYER—Possession—Sale of goods.

See SALE OF GOODS, col. 336.

CALL—Company—Shares.

See ALIEN ENEMY, col. 18, and CAPITAL OR INCOME, col. 77.

CANADA.

British Columbia, col. 69.

Compensation, col. 70.

Conflict of Laws, col. 70.

Criminal Law, col. 71.

Legislative Authority, col. 72.

Nova Scotia—

Compensation, col. 73.

Ontario—

Common Nuisance. See above, *Criminal Law*.

Compensation, col. 74.

Insurance (Accident). See INSURANCE (ACCIDENT).

Municipality, col. 74.

Quebec—

Jury List, col. 76.

British Columbia.

— Company.

See COMPANY, col. 97.

Corporation (Municipal)—*Electric light company*—*Agreement*—*Right to purchase system*—*Severance of municipal district*—*Appeal from*.

By an agreement made in 1905 the respondents, a municipal corporation, granted to the appellants exclusive power to construct and operate an electric light system within the municipal district, it being provided that at the expiration of ten years the respondents, upon giving twelve months' notice, might assume the ownership of the system within the district, subject to the payment of compensation. By a statute passed in 1907 part of the district

CANADA (British Columbia)—*continued*.

was formed into a new municipality, the statute providing that the above-mentioned agreement should be "adopted and carried into effect" by the municipality so created. In 1914 the respondents gave the appellants notice of their intention to assume the ownership of the system:—

Held, that the respondents were entitled to assume the ownership of the system throughout the district as it existed at the date of the agreement. *VANCOUVER POWER CO. v. CORPORATION OF THE DISTRICT OF NORTH VANCOUVER* - J. C. [1917] A. C. 598; 86 L. J. (P. C.) 298; 117 L. T. 492; [1917] W. N. 274

Railway—Exemption from taxation—Lands forming part of railway—Approval of plans—Condition—R. S. B. C., 1911, c. 194, ss. 17, 18.

By an Act of the Legislature of British Columbia the appellant co. "and . . . all properties and assets which form part of, or are used in connection with, the operation of its railway" were exempt from taxation. The Railway Act of British Columbia (R. S. B. C., 1911, c. 194) provides that a co. proposing to make a ry. shall make a plan, profile, and book of reference which by s. 18 are to be submitted to the Minister, who, if satisfied therewith, may sanction the same:—

Held, that land purchased by the appellants with the intention of using it for their ry. was not exempt from taxation until the plan, profile, and book of reference of the ry. proposed to be constructed thereon had been submitted to and approved by the Minister. *CANADIAN NORTHERN PACIFIC RY. CO. v. CORPORATION OF NEW WESTMINSTER* - J. C. [1917] A. C. 602; 86 L. J. (P. C.) 178; 117 L. T. 581

Compensation.

See COMPENSATION, col. 102, and below, *Nova Scotia*, col. 73, and *Ontario*, col. 74.

Conflict of Laws.

Death by negligence—Lex loci—Conditions in railway pass—Approval of Railway Board—Railway Act (R. S. Can., 1906, c. 37), s. 340—Fatal Accidents Act (1 Geo. 5, c. 33, Ontario)—Civil Code of Lower Canada, art. 1056.

A man domiciled in Quebec, while travelling on the appellants' ry. in charge of cattle, was killed in Ontario by the negligence of the appellants' servants. The cattle were consigned by the employers of the deceased man under the appellants' form of live stock contract, which provided that if a man was allowed to travel in charge of the cattle at less than full fare the appellants were to be under no liability for his death, injury, or damage, whether caused by negligence or otherwise. A pass at less than full fare was issued to the deceased, who placed his signature below conditions printed thereon. One of the conditions was that the appellants should be entirely free from liability for any damage, injury, or loss to the deceased, whether caused by negligence or otherwise. The form of the live stock contract had been approved by the Railway Board under s. 340 of the Railway Act, but the form of the pass had not been specifically so approved.

CANADA (Conflict of Laws)—continued.

The widow of the deceased sued the appellants in Quebec for damages under art. 1056 of the Civil Code of Lower Canada. Under the Fatal Accidents Act (1 Geo. 5, c. 33, Ontario) she could not have maintained an action in Ontario if her husband would have been precluded by his contract from doing so; the cause of action under art. 1056 is not thus limited:—

Held, (1.) that, upon the evidence, the deceased must be taken to have assented to the condition in the pass; (2.) that the approval of the Railway Board to the form of the live stock contract validated the form of the pass; (3.) that upon the principles of private international law the appellants were under no common law liability in Quebec, since they were neither civilly nor criminally liable in Ontario; (4.) that the presumption was that art. 1056 applied only to offences or quasi-offences committed within the legislative jurisdiction of that province, and there was no sufficient ground for holding that it had a wider effect. **CANADIAN PACIFIC RY. CO. v. PARENT**

J. C. [1917] A. C. 195; 83 L. J. (P. C.) 123; 116 L. T. 165; [1917] W. N. 35;

33 T. L. R. 180

Criminal Law.

Common nuisance—Indictment—Demurrer—Overcrowding street railway—Endangering public property and comfort—Contractual duty—"Criminal case"—Right of appeal to Privy Council—Criminal Code (R. S. Can., 1906, c. 146), ss. 221, 222, 223, 1025.

The Criminal Code (R. S. Can., c. 146) enacted by s. 10 that the criminal law of England as it existed on Sept 17, 1792, except so far as modified by the Code or by other statutes, should be the criminal law for the province of Ontario. The Code further provided as follows:—

Sect. 221: "A common nuisance is an unlawful act or omission to discharge a legal duty, which act or omission endangers the lives, safety, health, property, or comfort of the public, or by which the public are obstructed in the exercise or enjoyment of any right common to all His Majesty's subjects."

Sect. 222: "Every one is guilty of an indictable offence and liable to one year's imprisonment or a fine who commits any common nuisance which endangers the lives, safety or health of the public, or which occasions injury to the person of any individual."

Sect. 223: "Any one convicted upon any indictment or information for any common nuisance other than those mentioned in the last preceding section shall not be deemed to have committed a criminal offence; but all such proceedings or judgments may be taken and had as heretofore to abate or remedy the mischief done by such nuisance to the public right."

Sect. 1025: "Notwithstanding any Royal prerogative, or anything contained in the Interpretation Act or in the Supreme Court Act, no appeal shall be brought in any criminal case from any judgment or order of any Court in Canada to any Court of Appeal or authority by which in the United Kingdom appeals or

CANADA (Criminal Law)—continued.

petitions to His Majesty in Council may be heard."

The appellants operated a street ry. in Toronto under an agreement with the city corporation, confirmed by statute. The agreement provided that the cars were not to be overcrowded. They were convicted upon indictment in Ontario, under a count charging them with having failed, in breach of a legal duty, to take reasonable precautions to avoid undue, illegal, and dangerous overcrowding in their cars, whereby the property and comfort of the public, passengers in the cars, were endangered. The appellants demurred to the count, but upon a case stated the conviction was upheld; they then appealed to His Majesty in Council:—

Held, (1.) that, having regard to s. 223 of the Code, the matter was not a "criminal case" within the meaning of s. 1025, and that consequently it was not necessary to decide whether that section effectually abrogated the prerogative right of appeal in the cases to which it referred; (2.) that the demurrer should be allowed, since the overcrowding did not affect the public as such, but only those members of the public who had obtained licences from the appellants to use the cars. **TORONTO RY. CO. v. REX**; **A.-G. FOR ENGLAND AND A.-G. FOR CANADA, INTERVENERS** - J. C. [1916] A. C. 630;

86 L. J. (P. C.) 195; 117 L. T. 579; [1917] W. N. 277; 34 T. L. R. 1

Legislative Authority.

Separate schools—English-French schools—Restriction of use of French—Validity—British North America Act, 1867 (30 & 31 Vict. c. 3), s. 93, sub-s. 1—Common Schools Act, 1859 (22 Vict. c. 64), s. 79, sub-s. 8.

In Ontario there are two classes of free primary schools, namely, public schools and separate schools, the latter being denominational schools established under the Separate Schools Act, 1863 (26 Vict. c. 5, Upper Canada). The appellants were the elected trustees of the Roman Catholic separate schools in Ottawa, and under the above Act had power to determine the "kind and description" of separate schools to be established therein and power to manage them. In 1913 the Department of Education for the province, under provincial statutory powers to make regulations, issued a regulation restricting the use of French in schools, whether public or separate, in which French was a language of instruction and communication.

Sect. 93 of the British North America Act, 1867, enacts that for each province the Legislature may exclusively make laws in relation to education, but by sub-s. 1 provides that "nothing in any such laws shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have in the province at the Union." The appellants contended that the regulation was invalid under the above sub-section and was not binding upon them:—

Held, (1.) that the class of persons for whom the protection of the sub-section is claimed must be a class determined by religious belief and not by race or language; (2.) that the power of the

CANADA (Legislative Authority)—continued.

appellants as trustees to determine the "kind and description" of schools did not extend to determining whether English or French should be the language of instruction; (3.) that the regulation did not prejudicially affect any right or privilege secured by law at the Union to Roman Catholics in the province, and that it was consequently valid and binding upon the appellants. **OTTAWA ROMAN CATHOLIC SCHOOLS TRUSTEES v. MACKELL - J. C. [1917] A. C. 62; 86 L. J. (P. C.) 65; 115 L. T. 793; 33 T. L. R. 37**

Separate schools—Trustees—Act superseding trustees—Invalidity—Separate Schools Act, 1863 (26 Vict. c. 5, Upper Canada), s. 2—British North America Act, 1867 (30 & 31 Vict. c. 3), s. 93, sub-s. 1.

The appellants were elected under s. 2 of the Separate Schools Act, 1863 (26 Vict. c. 5, Upper Canada), by the supporters of the Roman Catholic separate schools in Ottawa to be the trustees for those schools, and had powers to manage them, subject to regulations. They refused to conduct the schools in accordance with regulations validly made by the Department of Education for the province, and failed to open the schools at the date appointed by law, and to provide or pay qualified teachers. The Legislature of Ontario thereupon passed an Act (5 Geo. 5, c. 45), which, after re-affirming the regulations and the statutory duties of the appellants, provided by s. 3 that if in the opinion of the Minister of Education the appellant board should fail to comply with any of the provisions of the Act he should have power, with the approval of the Lieutenant-Governor in Council, to appoint a commission and to vest in it all or any of the powers vested by statute in the board, and to suspend or withdraw all, or any part of, the rights and privileges of the board until he should think proper.

The British North America Act, 1867, s. 93, enacts that for each province the Legislature may exclusively make laws in relation to education, but provides, by sub-s. 1, "nothing in any such laws shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province at the Union":—

Held, that s. 3 of 5 Geo. 5, c. 45, above mentioned, was ultra vires and invalid under s. 93, sub-s. 1, of the British North America Act, 1867, since it prejudicially affected the right or privilege conferred by the Act of 1863 upon the supporters of the Roman Catholic separate schools in Ottawa (a section of a class of persons within the meaning of the sub-section) to elect trustees for the management of the schools. **OTTAWA ROMAN CATHOLIC SCHOOLS TRUSTEES v. OTTAWA CORPORATION - J. C. [1917] A. C. 76; 86 L. J. (P. C.) 73; 115 L. T. 797; 33 T. L. R. 41**

Nova Scotia.**Compensation.**

Railway—Alteration of highway—Order in Council—Deposit of plan—Payment of compensation—Nuisance—Nova Scotia Railways Act (R. S. N. S., 1900, c. 99), ss. 88, 124, 150, 178.

CANADA (Nova Scotia)—continued.

The appellants owned a provincial ry. which crossed a highway in Nova Scotia. In pursuance of an order made by the Governor in Council under s. 178 of the Nova Scotia Railways Act (R. S. N. S., 1900, c. 99) they altered the highway so as to pass under the ry., and thereby necessarily caused injury to the respondent's property. The appellants did not deposit a map or plan of the alteration under s. 124 of the Act, nor did they take any steps to compensate the respondent. The respondent sued the appellants for damages:—

Held, that the appellants were not entitled to proceed with the work until they had (a) deposited a map or plan under s. 124 of the above-mentioned Act; (b) paid or tendered, under s. 159, the awarded or agreed compensation for such injurious affection as would necessarily result from the work; and that the appellants consequently had acted illegally, and that the action was maintainable. **DOMINION IRON AND STEEL CO., LD. v. BURT J. C. [1917] A. C. 179; 86 L. J. (P. C.) 97; 116 L. T. 261; [1917] W. N. 46**

Ontario.**Common Nuisance.**

See above, Criminal Law, col. 71.

Compensation.

Railway—Arbitration—Appeal—Railway Act (R. S. Can., 1906, c. 37), s. 209, sub-s. 1.

In the case of the compulsory expropriation of land for the purposes of a ry., where the damages are assessed by arbitration under the Dominion Railway Act, the effect of s. 209, sub-s. 1, of the Act, which gives an appeal from the award upon any question of law or fact to a superior Court, is to put the award of the arbitrators in the same position as the judgment of the judge at a trial, and the C. A. will not interfere with their findings of fact without some special reason, unless it can be shown that they have proceeded upon a wrong principle in their valuation.

Decision of the Supreme Court of Canada affirmed. **RUDDY v. TORONTO EASTERN RY. CO. J. C. 86 L. J. (P. C.) 95; 116 L. T. 257; [1917] W. N. 34**

Insurance (Accident).

See INSURANCE (ACCIDENT), col. 201.

Municipality.

Electric light company—Letters patent—Right to erect poles—Formal agreement necessary—Franchise—45 Vict. (Ont.) c. 19, s. 2.

The appellants were incorporated by letters patent under R. S. Ont., 1877, c. 150, and 45 Vict. (Ont.) c. 19. The letters patent authorized them to lay down and maintain in, upon, and under the streets of Toronto all wires, poles, &c., to enable them to distribute electric light and power. By s. 2 of 45 Vict. (Ont.) c. 19, every co. incorporated under that Act may conduct electricity by any means through, under, or along the streets of the municipalities named by its letters patent, but only upon and subject

CANADA (Ontario)—continued.

to such agreement in respect thereof as should be made between the co. and the municipalities respectively:—

Held, (1.) that an agreement to be implied from acts of acquiescence by the respondents was not sufficient to satisfy s. 2 above mentioned, but that the section required a formal agreement as a condition precedent to the appellants' right to enter upon the streets of the city and construct its works; (2.) that the respondents had an absolute right to prohibit the appellants from constructing any works through, under, or along the streets, and not merely a right to regulate by agreement the manner in which the work should be carried out. **TORONTO ELECTRIC LIGHT CO. v. TORONTO CORPORATION** - J. C. [1917] A. C. 84; 86 L. J. (P. C.) 49; 115 L. T. 905

Railway company—Right to cross public highway on level—Consent of municipal council—Approval of plans—Construction—Ontario statute 60 Vict. c. 92, Sched. A.

By an agreement made between the predecessors in title of the appellants and the respondents and scheduled to an Act of Parliament, wide authority was given for the operation of the ry. as distinct from its construction, and in particular authority was given to construct and maintain such turnouts as might be found necessary for the purpose of leading to any track allowances or rights of way on land adjacent to a named street; and whether the turnouts shown on a plan approved by the Railway Board are for the purpose of leading to such track allowances or rights of way is a question of fact as to which the finding of the Railway Board is conclusive.

Toronto and York Radial Ry. v. Toronto Corporation (1913) 25 Ont. W. R. 315, distinguished.

It must be assumed that all the conditions required by the agreement as to approval of the plans by the municipal council were fulfilled before the line was put in operation, and it cannot be assumed that the ry. co. would not adopt the method and comply with the conditions prescribed by the agreement in carrying out works within their authority.

Decision of the Appellate Division of the Supreme Court of Ontario (35 Ont. L. R. 57) reversed. **TORONTO AND YORK RADIAL RY. v. TORONTO CORPORATION** J. C. 86 L. J. (P. C.) 119; 116 L. T. 65

Taxation—Assessment—Railway bridge—"Railway lands"—Assessment Act (R. S. Ont., 1914, c. 195), s. 47, sub-s. 3.

The Assessment Act (R. S. Ont., 1914, c. 195), which provides for the assessment for municipal taxation of real property in Ontario, by s. 47, sub-s. 3, exempts from assessment structures and other property upon "railway lands," and used exclusively for ry. purposes, or incidental thereto, except stations and certain other buildings:—

Held, that the words "railway lands" included any land lawfully occupied and used, and had no reference to the title under which the land was held. **CORNWALL MUNICIPAL**

CANADA (Ontario)—continued.

CORPORATION v. OTTAWA AND NEW YORK RY. CO. - J. C. [1917] A. C. 399; 86 L. J. (P. C.) 156; 117 L. T. 227; 33 T. L. R. 335

Quebec.

— Compensation—Value.

See COMPENSATION, col. 102.

— Conflict of laws—Provincial legislation—Death—Compensation.

See above, Conflict of Laws, col. 70.

Jury List.

Failure to revise—Verdict—Requete civile—Quebec Code of Civil Procedure, arts. 430, 431—R. S. Q., 1909, art. 3426.

The verdict of a jury in an action will not be set aside on account of irregularities in the due revision of the jury list unless the litigant applying proves that he has been prejudiced thereby.

The circumstances under which a statutory provision for the performance of a public duty should be treated as being merely directory, considered. **MONTREAL STREET RY. CO. v. NORMANDIN** - J. C. [1917] A. C. 170; 86 L. J. (P. C.) 113; 116 L. T. 162; [1917] W. N. 34; 33 T. L. R. 174

CANCELLATION—Charterparty.

See SHIPPING, col. 401.

— Contract—Notice by seller of intention to cancel.

See SALE OF GOODS, col. 377.

CAPITAL—Reduction—Company.

See COMPANY, col. 87.

CAPITAL MONEYS—Settled land.

See SETTLED LAND, col. 384.

CAPITAL OR INCOME—Administration—Trustees—Loan of securities to Treasury—Scheme B—Consideration, whether income or capital—Tenant for life and reversioner.

Trustees deposited trust securities with the Treasury by way of loan for a term of years under a scheme of the Treasury, known as Scheme B, which provided that while the securities were on deposit with the Treasury the lenders would receive from the Treasury all interest and dividends paid in respect of them, and also, by way of consideration for the loan, a payment at the rate of one-half of 1 per cent. per annum calculated on the face value of the securities; that at the end of the period of loan the Treasury would either return to the lender the securities or, at their option, pay to him the deposit value (as defined by the scheme) of the securities with an addition of 5 per cent. on that value; and that the interest and dividends on all deposited securities, together with the additional payment at the rate of one-half of 1 per cent. per annum, would be paid to the holder for the time being on the Treasury Register, and, for convenience of payment, in cases where interest or dividends were payable half-yearly, a full half-year's additional payment (namely, $\frac{1}{2}$ per cent.) would be added to the first dividend payment, and on the termination of the loan the amount

CAPITAL OR INCOME—continued.

due from the actual date of deposit to the date of return would be calculated, and any overpayment or underpayment would be adjusted. Questions having arisen whether the one-half of 1 per cent. per annum paid as consideration for the loan and the additional 5 per cent. on the deposit value of the securities at the termination of the loan were capital or income of the trust estate, and how the full half-year's additional 1 per cent. added to the first dividend payment was to be dealt with on the death of a tenant for life:—

Held, that the one-half of 1 per cent. per annum was to be treated as income and the 5 per cent. was to be treated as capital of the trust estate.

Held, also, that the trustees ought to deduct from the first full half-year's payment in advance of the additional interest at the rate of $\frac{1}{2}$ per cent. per annum and to retain for the purpose of ultimate adjustment (if necessary) so much of such payment as exceeds the amount of such interest at the rate aforesaid for the period between the date of the deposit and the date at which such first payment may be made.

In re OPPENHEIM. OPPENHEIM v. OPPENHEIM
Neville J. [1917] 1 Ch. 274; 86 L. J. (Ch.)
193; 116 L. T. 7; [1916] W. N. 429;
33 T. L. R. 119

Settlement—Shares partly paid up—New shares issued—Call—Bonus—Capital or income—Tenant for life and remainderman.

Trustees under the powers given them by the will of their testator retained, as part of his residuary trust estate, 300 shares of 10l. each, with 2l. 10s. per share paid up, in a prosperous Australian co. In Nov., 1912, the co. held its annual general meeting and paid a large dividend, and issued new shares which were offered rateably to the shareholders, and the trustees took up fifty-one shares, their proportion of the new shares, and paid up 2l. 10s. per share thereon out of the capital of the testator's estate.

In Feb., 1913, the directors issued a circular to the shareholders stating that they had made a call of 10s. per share and had declared a bonus of 10s. per share, both payable on the same date, and that unless advised by the shareholders to the contrary before that date the bonus would be applied in payment of the call. The circular reached the trustees too late for them to reply to it, and the bonus was applied in payment of the call. On the question whether the bonus was to be treated as capital or income of the testator's estate:—

Held, that the co. intended to capitalize its profits to the extent of 10s. per share by utilizing the bonus to pay the call, and therefore the tenant for life was not entitled to the bonus. *In re HATTON. HOCKIN v. HATTON*
Neville J. [1917] 1 Ch. 357; 86 L. J. (Ch.)
375; 116 L. T. 281; [1917] W. N. 21;
61 S. J. 253

CARGO—Contraband.

See PRIZE COURT, col. 317.

—Remainder—Sale.

See SALE OF GOODS, col. 372.

CARGO—continued.**—Re-stowing.**

See SHIPPING, col. 393.

CARRIAGE—Goods.

See CARRIER, col. 78, RAILWAY,
col. 338, SALE OF GOODS, col. 371,
and SHIPPING, col. 391.

CARRIER—Carriage of goods—Delivery “ex ship to railway”—Exception clause as to liability of carriers during warehousing—Justifiable deposit in carriers’ warehouse—Goods destroyed by fire—Liability of carriers.

The plts. contracted with the defts., owners of a line of local steamers, for the carriage of goods to be delivered “ex ship on rail,” and directed them to deliver a particular cargo “ex ship to the railway company to our order.” The contract contained a clause protecting the defts. from liability for damage to the goods by fire whilst (inter alia) being warehoused. The goods, on arrival at the quay, were placed in the defts.’ warehouse adjoining thereto, and were destroyed by fire. In an action by the plts. for damages for loss of the goods:—

Held, on the facts, that the removal of the goods to the defts.’ warehouse was justifiable, and, consequently, that they were protected by the exceptions clause contained in the contract. *ESSEX COUNTIES FARMERS’ CO-OPERATIVE ASSOCIATION, LD. v. NEWHOUSE & CO.*

Rowlatt J. 86 L. J. (K. B.) 172

Theft by servant—Prosecution by carrier—Action against carrier—Ratification—Estoppel.

A firm of tea merchants sent a consignment note to their wharfingers, requesting them to deliver three chests of tea to a ry. co. who were to carry the tea and deliver it to certain purchasers. A carter, who was or had been in the service of the ry. co. but who at the time was absent from work on sick leave, presented himself at the wharf in a uniform and with a horse and cart of the ry. co. and demanded and received the tea, which he then converted to his own use. The ry. co. afterwards prosecuted him to conviction for larceny, laying the property in the tea in themselves.

In an action by the tea merchants against the ry. co. for breach of duty as common carriers:—

Held, in the absence of negligence, that the defts. were not liable, inasmuch as, though they had ratified the de facto possession of the tea by the carter, they had not ratified any possession under a contract of carriage. *HARRISONS & CROSSFIELD, LD. v. LONDON AND NORTH-WESTERN RY. CO.* - - Rowlatt J.

[1917] 2 K. B. 755; 86 L. J. (K. B.) 1461;
117 L. T. 570; 33 T. L. R. 517; 61 S. J. 647

CASE STATED—Non-service of copy of notice of appeal and case on respondent before deposit of case at Central Office.

See ARMY, col. 45.

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CEYLON—Roman-Dutch law—Mala fide possession—Impensae utiles—Compensation.

Whether or not under Roman-Dutch law as administered in Ceylon a mala fide possessor of land is ever entitled to compensation for impensae utiles, a person who has acquired possession knowing that he is invading the rights of others cannot recover compensation for works which are not authorized by the owners of the property and which he knows alter its character. *SINNETAMBY CHETTY v. ELSIE DE LIVERA* - - - J. C. [1917] A. C. 534; 86 L. J. (P. C.) 169; 117 L. T. 258

CHANGE OF CIRCUMSTANCES—Workmen's compensation—Review.

See WORKMEN'S COMPENSATION, col. 509.

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CHARITY.

Association. See TRUST.

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CHARITY—continued.

Association.

— Association to secure particular benefits to members—Association intended to be permanent—Purpose obsolete.
See TRUST, col. 444.

Attorney-General.

— Assent—Compromise.
See WILL, col. 463.

Charitable Gift.

"Benevolent objects"—Will—Gift—Construction—Uncertainty.

A testator domiciled in New Zealand provided by his will that a fund should be held in trust for such "charitable benevolent religious and educational institutions societies associations and objects" as his trustees should select. In an investment clause the will referred to "any . . . institution commercial municipal religious charitable educational or otherwise";—

Held, that the gift must be construed as though the word "and" were "or," and that, having regard to the investment clause, it could not be read as though the word "charitable" governed each of the three following words; that the gift accordingly failed for uncertainty, a gift to "benevolent objects," whether made in England or New Zealand, not being a good charitable gift. *ATT.-GEN. FOR NEW ZEALAND v. BROWN* - J. C. [1917] A. C. 393; 86 L. J. (P. C.) 132; 116 L. T. 625; [1917] W. N. 127; 33 T. L. R. 294

Charitable use—Gift to vicar and trustees to provide an annual treat or field day for the schoolchildren of the parish—Good charitable gift. In re MELLODY. *BRANDWOOD v. HADEN* Eve J. [1917] W. N. 354; 34 T. L. R. 122; 62 S. J. 121

Gift of uncertain amount—Failure of—Gift of surplus.

Lands were devised to trustees on trust to apply the profit rents for the erection of a parish chapel and parochial house on part of the lands called the chapel field, which was expressly devised on trust for the accommodation of the parish priest for the time being of the parish of C. and his successors, and when the chapel and house were built, the rest of the lands were to be held upon trust to pay one half of the profit rents to the parish priest for the time being for masses, and the other half amongst the poor of the parish to be divided amongst them every Christmas by the trustees and the parish priest for ever.

There was no residuary devise in the will. The lands were sold, and the net proceeds, amounting to 1443*l.*, were paid to the Commrs. of Charitable Donations and Bequests.

There was no need to erect a parish chapel or parochial house, as there were a parish chapel and parochial house in the immediate neighbourhood.

An originating summons having been taken out by the trustees to determine the construction of the will and the disposal of the fund:—

Held, that the gift for masses and for the

CHARITY (Charitable Gift)—*continued*.

poor was a devise of the whole, subject to a gift that failed, and not a gift of the residue after a void gift, and accordingly that the whole net proceeds of sale were applicable to these valid charitable objects.

Chapman v. Brown (1801) 6 Ves. 404, distinguished, and the principle of that case considered and dissented from. *KELLY v. ATT.-GEN. (Ir.)*

O'Connor M.R. (Ir.) [1917] 1 I. R. 183

"Presbyterian missions and orphans"—*Validity of gift.*

By her will a testatrix gave her residuary estate to "Presbyterian missions and orphans, and to A. S. 20l." :—

Held, that the gift to "Presbyterian missions and orphans" was a good charitable gift. *JACKSON v. ATT.-GEN.* - - - *Barton J.*

[1917] 1 I. R. 332

Christ's Hospital.

See below, Scheme, col. 81

Ireland.

See IRELAND, col. 221.

Probate Action.

— Charities cited and not appearing—Compromise—Assent of Attorney-General—Charities bound by compromise. *See WILL, col. 463.*

Scheme.

Christ's Hospital—Administration of—"Recommendation" of almoner—Discretion of governors to refuse to appoint—Mandamus.

Clause 19 of the scheme made under the Endowed Schools Act, 1869, for the management of Christ's Hospital provides that a certain number of the Council of Almoners shall be appointed by the governors "on the recommendation of," among other bodies, the Lord Mayor and Aldermen of the city of London. The governors, who contended that they had a discretion as to appointing a person so recommended, refused to appoint a person recommended by the Lord Mayor and Aldermen :—

Held, (1.) that the word "recommendation" in clause 19 must be construed as a nomination upon which the governors were bound to act, and (2.) (Avery J. doubting) that, in the circumstances, mandamus was the proper remedy to compel the governors to perform the duty of appointing the person recommended. *REX v. CHRIST'S HOSPITAL GOVERNORS. Ex parte DUNN* - - - *Div. Ct.* [1917] 1 K. B. 19 :

85 L. J. (K. B.) 1494; 14 L. G. R. 975 ;

115 L. T. 545 ; [1916] W. N. 322 :

80 J. P. 423 ; 82 T. L. R. 594

CHARTERPARTY.

See SHIPPING.

CHATELS—Heirlooms—Trusts of.

See HEIRLOOMS, col. 186.

CHEQUE—Bank.

See BANK, col. 55.

CHILD—Intervention of—Marriage—Validity.

See DIVORCE, col. 146.

— Settlement—Poor law.

See POOR LAW, col. 306.

CHILDREN—Gift to—Will.

See WILL, col. 473.

CHOSE IN ACTION—*Local assignment—Judgment for costs—Costs taxed but amount not entered—Present or future debt—Assignment by deed without consideration.*

A judgment for possession of land and costs had been recovered against the debt. The costs had been duly taxed, but the amount thereof was not entered upon the record. While the record was in this form the judgment was assigned to the plt. by deed without consideration, and notice in writing of the assignment was duly given to the debt. In an action by the plt. to assignee to recover the amount of the costs :—

Held, that the deed operated as a valid legal assignment of a present debt, and that the plt. was entitled to recover. *HAMBLETON v. BROWN Atkin J.* [1917] 2 K. B. 90 ; 86 L. J. (K. B.) 1223 ; 117 L. T. 146

CHRISTIAN—Marriage.

See DIVORCE, col. 145.

CHRISTIANITY—Part of the common law.

See COMPANY, col. 92.

CHRIST'S HOSPITAL—Scheme for administration of.

See CHARITY, col. 81.

CHURCH OF ENGLAND—Lay reader.

See ARMY, col. 34.

CITY OF LONDON COURT—Action begun in

—Transfer to High Court.

See SHIPPING, col. 392.

CLASSIFICATION—Merchandise—Description of goods.

See RAILWAY, col. 312.

CLOG—Equity of redemption.

See COMPANY, col. 85.

CODE—Telegraphic.

See COPYRIGHT, col. 116.

CODICIL.

See WILL.

COINS—Gift of.

See WILL, col. 462.

COLLISION—Shipping.

See SHIPPING, col. 409.

COMMERCIAL ADVENTURE—Frustration.

See SHIPPING, col. 401.

COMMERCIAL DOMICIL.

See PRIZE COURT, col. 324.

COMMISSION—Contract—Articles "sold"—Whether commandeered articles included.

Where an employee is entitled, in addition to his salary, to a commission on articles "sold"

COMMISSION—continued.

by his employers, he has no right to such commission on articles commandeered by the Government from his employers under s. 115 of the Army Act. *THOMPSON v. BRITISH BERNAL MOTOR LORRIES, LD.* - - - McCardie J. 33 T. L. R. 187

See **COMPANY—Manager.**

— **Contract—Determination—Right to commission after agency determined.**
See **PRINCIPAL AND AGENT**, col. 311.

— **Evidence—Divorce.**

See **DIVORCE**, col. 143.

— **Excess profits duty—Business—Person concerned in management—Remuneration.**

See **REVENUE**, col. 355.

Excess profits duty—Company—Managing director—Commission on “net profits”—Finance (No. 2) Act, 1915 (5 & 6 Geo. 5, c. 89), s. 38.

FELLOWS, LD. v. COCKER

Neville J. [1917] W. N. 299; 62 S. J. 54

Excess profits tax—Contract—Manager—Annual net profits—Commission on—Deduction—Finance (No. 2) Act, 1915 (5 & 6 Geo. 5, c. 89), Part III.—Finance Act, 1916 (6 & 7 Geo. 5, c. 24), Part III.

The plt. was engaged as manager of four of the numerous branches of the defts.' business, his remuneration being a commission of 15 per cent. of the net profits of those four branches treated as a whole. In computing the net profits of the four branches for the purpose of ascertaining the sum due to the plt. for commission the defts. claimed to deduct a proportionate amount of the “excess profits duty” payable in respect of the profits of their business:—

Held, that the “excess profits duty” could not be deducted in computing the net profits upon which the plt. was entitled to receive a commission. *THOMAS v. HAMLYN & CO.*

Rowlatt J. [1917] 1 K. B. 527; 86 L. J. (K. B.) 1009; 116 L. T. 475; 33 T. L. R. 129

Excess profits tax—Contract—Manager—Profits—Deduction—Finance (No. 2) Act, 1915 (5 & 6 Geo. 5, c. 89), ss. 38, 40—Finance Act, 1916 (6 & 7 Geo. 5, c. 24), ss. 45, 48, 49—Munitions of War Act, 1915 (5 & 6 Geo. 5, c. 54), Part II.

By an agreement of service made in 1913 between a co. and its manager it was provided that whenever the profits of the co. made during the financial year were more than sufficient to pay the preference dividends, and also a dividend of 7 per cent. on the ordinary shares, the manager, in addition to his fixed salary, should be paid by way of commission a sum equal to 5 per cent. of the excess. The co. made excess profits within the meaning of the agreement.

Upon a summons raising the question whether, before ascertaining such excess, the co. was or was not entitled to deduct the excess profits duty payable under the Finance (No. 2) Act, 1915, and the Finance Act, 1916:—

Held, that the excess profits duty was a contribution to the Exchequer of a proportion

COMMISSION—continued.

of the co.'s profits standing on much the same footing as the income tax, and ought not to be deducted before ascertaining the excess profits on which the manager's commission was to be calculated. *WILLIAM HOLLINS & CO. v. PAGET EVE J.* [1917] 1 Ch. 187; 86 L. J. (Ch.) 287; 116 L. T. 9; [1916] W. N. 429; 61 S. J. 170

— **Traveller—Agency determined—Contract—Illegality—Suspension—Dissolution.**
See **PRINCIPAL AND AGENT**, col. 312.

COMMISSIONERS—Income tax.

See **REVENUE**, col. 358.

— **Land tax.**

See **REVENUE**, col. 361.

— **Sewers.**

See **SEWERS, COMMISSIONERS OF.**

COMMITTEE—Friendly society—Jurisdiction.

See **FRIENDLY SOCIETY**, col. 182.

— **Lunatic—Testator—Servants engaged.**

See **WILL**, col. 463.

“COMMODITIES.”

See **PRIZE COURT**, col. 324.

COMMON—*Regulation—Encroachment—Boundaries—Map admissible in evidence and conclusive—Ditch width—Presumption of ownership—Conservator's right to sue—Commons Act, 1876 (39 & 40 Vict. c. 56), s. 36—Statute of Limitations.*

COLLIS v. AMPHLETT - - - Younger J. [1917] W. N. 291; 62 S. J. 37

COMMON EMPLOYMENT—*Mere volunteer—Volunteer with interest—Liability of master for negligence of servant.*

See **MASTER AND SERVANT**, col. 272.

COMMON NUISANCE—*Canada (criminal law)—Indictment.*

See **CANADA**, col. 71.

COMPANY.

Alien Enemy. See **ALIEN ENEMY.**

Amalgamation, col. 85.

Articles of Association, col. 85.

Association, Articles of. See above, **Articles of Association.**

Association, Memorandum of. See below, **Memorandum of Association.**

Capital, col. 87.

Costs. See **COSTS.**

Debentures, col. 87.

Directors, col. 90.

Dividend, col. 91.

Excess Profits Tax. See **COMMISSION** and below, **Shares.**

Incorporation, Certificate of. See below, **Memorandum of Association.**

Lease. See **LANDLORD AND TENANT.**

Maintenance of Suit. See **MAINTENANCE (SUIT).**

COMPANY—continued.*Manager.* See COMMISSION.*Meeting,* col. 91.*Memorandum of Association,* col. 92.*Mortgage,* col. 94.*Objects.* See above, *Memorandum of Association.**Prospectus.* See above, *Directors.**Reconstruction.* See AUSTRALIA.*Registration,* col. 95.*Shares,* col. 95.*Ultra Vires,* col. 97.**Alien Enemy.**

See ALIEN ENEMY, col. 17.

Amalgamation.*Scheme of arrangement—“Compromise or arrangement”—Sanction of Court—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 120.*

An assurance co. presented a petition under s. 120 of the Companies (Consolidation) Act, 1908, for the sanction of the Court to a proposed arrangement for the fusion of the co.'s interests with those of a marine insurance co., and for the subdivision of its shares in order to carry out the arrangement. The scheme involved that each of the petitioning co.'s shareholders should contribute a portion of his holding in the co. to be transferred to the marine insurance co. and its shareholders, and it had been approved by the requisite majority of the shareholders in general meeting.

Younger J., while approving the scheme as being advantageous to the interests of the co., refused to sanction it on the ground that s. 120 necessarily involved some kind of dispute or difficulty to be resolved by a compromise or arrangement, and that there was none shown to him in the present case:—

Held, on appeal, that the scheme, though not a “compromise,” was an “arrangement” within the section, and that there was no ground for limiting the meaning of the word “arrangement” to something analogous to a compromise.

Decision of Younger J. reversed. *In re GUARDIAN ASSURANCE CO.* - C.A. [1917] 1 Ch. 431; 86 L. J. (Ch.) 214; [1917] H. B. R. 113; 116 L. T. 193; [1917] W. N. 20; 33 T. L. R. 169; 61 S. J. 232

Articles of Association.

Articles, alteration of—Special resolution—Validity—Fully-paid shares—Lien on shares—Forfeiture for debt—Ultra vires—Illegal reduction of capital—Clog on equity of redemption.

Art. 22 of the articles of association of a limited co., as altered by a special resolution, provided that the co. should have a first and paramount lien upon all the shares registered in the name of each member for the debts, liabilities, and engagements of such member. Art. 23 provided that the board might sell the shares for the purpose of enforcing the lien,

COMPANY (Articles of Association)—continued.

and might also, by a resolution to that effect, forfeit the shares subject to such lien.

The holder of fully-paid shares brought an action against the co. and its directors asking for a declaration, in effect, that his fully-paid shares were not subject to the power of forfeiture for debts on the ground that it was ultra vires and illegal. There had been no threat to forfeit the plt.'s shares:—

Held: (1.) That the plt. was not premature in coming to the Court, as his rights had already been invaded and his property damaged.

(2.) That under this power the forfeiture for debts due from a member generally, as distinct from those due from him as a contributory, would amount to an illegal reduction of capital.

(3.) That the lien being an equitable charge in the nature of a mortgage, the power to forfeit the plt.'s shares, on his failure to redeem on seven days' notice, was a clog on the equity of redemption and as such invalid and ultra vires, and the plt. was therefore entitled to the declaration claimed. *HOPKINSON v. MORTIMER, HARLEY & CO.* - Eve J. [1917] 1 Ch. 646; 86 L. J. (Ch.) 467; 116 L. T. 676; [1917] W. N. 99; 61 S. J. 384

Article enabling company to compel sale of shareholders' shares—Price fixable by company—Sale directed at undervalue—Oppressive action by majority of shareholders—Fraud—Bona fides—Ultra vires.

The deft. co. was incorporated in 1912 with the object of furthering the interests of a federation of bedstead manufacturers, and of forming a convenient means for the investment of the funds of the federation. The rules of the federation provided for the payment by each member of 1 per cent. of each month's sales to form a reserve fund, which was to be invested and the income paid to the members in due proportion. The practice followed was that sums so paid by members were paid to the deft. co., and shares in that co. issued to the members in respect of their respective payments. The plt. in this way became the holder of shares in trust for the plt. co., which was a member of the federation. Art. 96 of the deft. co.'s articles of association provided that the co. in general meeting might, by resolution passed by a three-fourths majority, “determine that the shares of any member shall . . . be offered for sale by the company to other members and any such resolution may fix the price to be paid” at any price not being less than 1s. per share, “and in case no such price shall be so fixed the price shall be 1s. per share.” The plt. co. having left the federation, the deft. co. passed a resolution by the requisite majority for the sale of the plt.'s shares at 1s. a share. It was admitted that in so doing the deft. co. had directed a sale at a gross undervalue with the intention of punishing the plt. co. for leaving the federation and thereby assisting to keep the federation together:—

Held, on the construction of the article, that it was open to the requisite majority of the shareholders in general meeting to direct a

COMPANY (Articles of Association)—continued.

sale of a member's shares at less than their real value, and that the fact that their resolution provided for a sale at a gross undervalue was no evidence that they acted oppressively or fraudulently, or that they acted otherwise than in bona fide exercise of the power conferred by the article. *PHILLIPS v. MANUFACTURERS' SECURITIES, LD.* - C. A. 86 L. J. (Ch.) 305; 116 L. T. 290

Association, Articles of.

See above, *Articles of Association*, col. 85.

Association, Memorandum of.

See below, *Memorandum of Association*, col. 92.

Capital.**Reduction of—Petition—Practice.**

On a petition for confirmation by the Court of a reduction of capital, the reduction taking the form of paying off paid-up share capital and the petition not alleging that such capital was in excess of the wants of the company, Younger J. in confirming the reduction, subject to an affidavit being produced in general terms to the effect that the co. would still have capital sufficient for its needs after such payment off, required the petition to be amended by stating that the capital proposed to be paid off was in excess of the wants of the co. *In re TARAPACA AND TOCOPILLA NITRATE CO.*

Younger J. [1917] W. N. 356; 62 S. J. 122

Reduction of—Subdivision of shares partly paid up—Resulting shares partly paid and wholly unpaid—Surrender of wholly unpaid shares—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), ss. 41 (d), 45, 46 (a), 120.

The issued share capital of a co. consisted of 640 shares of 500l. each on which 185l. per share had been called up and paid. The Court under s. 46 (a) of the Act sanctioned a special resolution reducing this capital by (a) dividing each issued share of 500l. into five shares of 100l. each; (b) apportioning the 185l. called upon each issued 500l. share equally between three of the 100l. shares resulting from such subdivision, leaving a liability of 38l. 6s. 8d. on each of such three 100l. shares; and (c) surrendering for re-issue when required the remaining wholly unpaid two shares of 100l. each resulting from such subdivision of each issued 500l. share. *In re DOBOSWELLA RUBBER AND TEA ESTATES, LD. AND REDUCED* - Neville J. [1917] 1 Ch. 213; 86 L. J. (Ch.) 223; 115 L. T. 853;

[1916] W. N. 413

See CAPITAL OR INCOME.

Costs.

See COSTS, col. 118.

Debentures.

Debenture-holder's action — Costs — Taxation.

See COSTS, col. 118.

Insolvent company—Debentures issued within three months of winding up—Debentures to secure past and future advances—Fresh advance repaid

COMPANY (Debentures)—continued.

before winding up—Measure of validity—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 212.

Within three months of winding up, an insolvent co. issued debentures to their bank to secure their loan and current accounts. The loan account, on which a considerable sum was owing, was left untouched, but the bank subsequently advanced more than the value of the debentures on the current account. At the time of the winding up, however, there was nothing due on current account, the advance having been discharged by payments to that account in the ordinary course of business:—

Held, that under s. 212 of the Companies (Consolidation) Act, 1908, the debentures so far as issued as security for the past debt on the loan account were invalid, and so far as issued as security for the fresh advance on the current account they were only valid to the extent of the money owing on that account at the date of the winding up, and, this being nil, they were wholly invalid. *In re HAYMAN, CHRISTY & LILLY, LD. CHRISTY v. THE CO.* - Astbury J.

[1917] 1 Ch. 283; 86 L. J. (Ch.) 255;

[1917] H. B. R. 80; 116 L. T. 283;

[1917] W. N. 26; 33 T. L. R. 167

Payment—No place fixed for—Death of debenture-holder—Executor—Delay in registration of probate—No legal tender—Interest until date of payment—Liability of company.

Where the registered debenture of a co. does not contain any provision appointing a particular place for payment, it is the duty of the co. to seek the debenture-holder, if he is within the realm, and make legal tender of the money on the due date without request; and in a case where no such legal tender has been made the holder of such a debenture, who from oversight, carelessness, or other cause has neglected to present his debenture for payment off on the due date, can recover from the co. interest on the principal moneys thereby secured down to the date of actual payment.

Decision of Eve J. [1917] 1 Ch. 527 affirmed. *FOWLER v. MIDLAND ELECTRIC CORPORATION FOR POWER DISTRIBUTION, LD.* - C. A.

[1917] 1 Ch. 656; 86 L. J. (Ch.) 472;

117 L. T. 97; [1917] W. N. 153;

33 T. L. R. 322; 61 S. J. 459

Receiver and manager—Appointment of—Affidavit of fitness—Misleading statements—Discharge—Description of deponent—"Director of public companies"—"Merchant"—Insufficiency—O. XXXVIII., r. 8.

In a debenture-holders' action by the plts. one J. S. had been by order of Nov. 24, 1916, appointed receiver and manager of the property and assets of the defts. In an affidavit of W. C., described as a "director of public companies," he stated that for five years past he had known J. S., of No. 1, R. Street, A., "accountant," the proposed receiver and manager, that the accountant had carried on business as such for upwards of five years at No. 1, R. Street and elsewhere in the city of London, and that J. S. was a person of respectability and a fit and proper person to be appointed receiver and

COMPANY (Debentures)—continued.

manager of the defts.' property and assets. J. S. was, according to the evidence, secretary to a political league, and had an office at No. 1, R. Street for two months past, and there was no evidence that he had carried on business as an accountant. On motion to discharge J. S. from the receivership:—

Held, that the appointment had been procured by means of a misleading affidavit, and the receiver must be discharged. There was no reflection upon J. S. personally.

"Director of public companies" or "merchant" is not a proper description of a deponent in an affidavit, and does not conform to the requirements of r. 8 of O. XXXVIII. *In re Church Press, Ltd.* VICTORIA HOUSE PRINTING CO. LD. v. CHURCH PRESS, LD. — Eve J. 116 L. T. 247; [1917] W. N. 39

Validity—Estoppel—Res judicata—Test action—O. XVI., r. 8.

By a deed executed in 1895, property of a distillery co. was conveyed to trustees for the holders of second debentures to be thereafter issued. The articles of association of the co. provided that no director should vote in respect of any matter in which he was individually interested, the quorum of directors being fixed at two.

D., a director of the co., advanced moneys to the co. on the security of manufactured whisky of the co. stored in a warehouse, and also upon second debentures issued to him by the co. in 1903, but forming part of the series secured by the trust deed of 1895. There was admittedly no quorum of independent directors present at the meeting which purported to authorize the issue of these debentures to D.

The present action was instituted in 1905 by the plt. on behalf of himself and all other holders of first debentures claiming a declaration that certain first mortgage debentures were well charged on the property of the co., and a liquidator was subsequently appointed (*Cox v. Dublin City Distillery* [1906] 1 I. R. 446; [1915] 1 I. R. 345).

In 1909 D. instituted an action for a declaration as to his rights against the co. in liquidation and the trustees for the second debenture-holders. The latter defts. delivered no defence, and D. obtained judgment against them by default. The co. impeached D.'s right to claim a lien on the second debentures, on the ground that these were not registered under the Companies Act, 1900, but no point as to the absence of a proper quorum at the meeting which purported to authorize the issue of D.'s debentures was either pleaded or specifically relied upon in argument. D.'s action subsequently resulted in a declaration by the H. L. that D. was not entitled to a valid pledge of the whisky, but was entitled to a valid lien on the debentures for the amount of his advances to the extent of the property comprised in the trust deed.

On the hearing of a memorandum from the Chief Clerk in the present action:—

Held, by the C. A. (Ir.), reversing the order of Barton J., that the holders of valid second debentures, issued by the co. in 1895, were

COMPANY (Debentures)—continued.

sufficiently represented by the trustees for the second debenture-holders in the action brought by D. against the co. and the said trustees, and that the order of the H. L. in the latter action operated as an estoppel so as to preclude the holders from relying in the present action on the invalidity in the creation of D.'s debentures. *Cox v. Dublin City Distillery Co. C. A. (Ir.)* [1917] 1 I. R. 203

Directors.

Power to remove—General meeting—Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), s. 91.

WEST SOMERSET MINERAL RY. CO. v. ROBINSON — Astbury J. [1917] W. N. 374; 34 T. L. R. 132; 62 S. J. 175

Prospectus—Untrue statements—Liability of director—Death of director—Actio personalis moritur cum persona—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 84, sub-s. 1.

The liability of directors, promoters, and others, under sub-s. 1 of s. 84 of the Companies (Consolidation) Act, 1908, to pay compensation to subscribers for shares or debentures for loss or damage sustained by untrue statements in prospectuses or reports is a liability in tort, and an action in respect of such liability does not lie against the executor of the tortfeasor unless by the latter's tortious act property or the proceeds or value of property belonging to the person injured have been added to the tortfeasor's estate.

Shepherd v. Bray [1906] 2 Ch. 235 not followed on this point. *GEIPEL v. PEACH*

Sargant J. [1917] 2 Ch. 108; 86 L. J. (Ch.) 745; 117 L. T. 84; [1917] W. N. 144; 61 S. J. 460

Transfer of shares—Restrictions on transfer—Refusal of one director to attend directors' meeting—Inability to obtain quorum—Rectification of register of members—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 32.

A shareholder, whether in a public or in a private co., has a property in his shares which he has a right to dispose of, subject only to any express restrictions which may be found in the articles of association of the co.

The law stated in *In re Bede Steam Shipping Co.* [1917] 1 Ch. 123 is applicable as well to shares in a private as to shares in a public co.

The articles of association of a private co. provided that no share should be transferred to any person not already a member without the consent of the directors. There were two directors only, E. and P., E. being the chairman and having in that character a casting vote. The quorum necessary for the transaction of business was two. E., without first having obtained the consent of the board, executed transfers of some of his shares to persons not already members of the co. and sent the transfers to the co. for registration. P. purposely refused to attend board meetings summoned to consider the transfers in order to prevent a quorum being formed. On an application by the transferees under s. 32 of the Companies (Consolidation) Act, 1908:

COMPANY (Directors)—continued.

Held, that the articles did not require the directors' consent to be obtained before the execution of the transfers and that the transfers therefore were not inoperative documents, though they had no legal effect till the consent of the directors had been obtained and registration effected.

Held, also, that P. could not by wilfully refusing to attend board meetings prevent the transfers from being registered, and that the transferees under the circumstances were entitled to an order directing the co. to register the transfers. *In re COPAL VARNISH Co.*

Eve J. [1917] 2 Ch. 349; 117 L. T. 508; [1917] W. N. 254

Dividend.

Net profits—Previous losses—Availability of profits for dividend.

There is no obligation on a limited co. to the effect that unless its paid-up capital is intact or until it has first made good all losses incurred in previous years it shall not distribute as dividend the clear net profits of its trading.

Decision of Peterson J. (33 T. L. R. 509) affirmed. *THE AMMONIA SODA Co. v. CHAMBERLAIN AND OTHERS* - C. A. 34 T. L. R. 60; 62 S. J. 85

Excess Profits Tax.

See COMMISSION, col. 83, and below, Shares, col. 95.

Incorporation, Certificate of.

See below, Memorandum of Association, col. 92.

Lease.**— Assignment.**

See LANDLORD AND TENANT, col. 244.

Maintenance of Suit.

See MAINTENANCE (SUIT), col. 270.

Manager.**— Commission.**

See COMMISSION, col. 83.

Meeting.

Voting by proxy—Proxies to be lodged two days before meeting—Adjourned meeting—Proxies lodged after date of original meeting but before adjourned meeting—Invalidity.

Where the articles of a co. provide that "The instrument appointing a proxy shall be deposited at the registered office of the company not less than two clear days before the day for holding the meeting at which the person named in such instrument proposes to vote," proxies lodged after the date of an original meeting, but more than two days before the day fixed for an adjournment thereof, cannot be used for the purpose of voting at the adjourned meeting.

Scadding v. Lorant (1851) 3 H. L. C. 418 applied.

Decision of Astbury J. [1917] 2 Ch. 41 affirmed. *McLAREN v. THOMSON* - C. A. [1917] 2 Ch. 261; 84 L. J. (Ch.) 713; 117 L. T. 417; [1917] W. N. 214; 33 T. L. R. 463; 61 S. J. 576

See below, Ultra Vires, col. 97.

COMPANY—continued.**Memorandum of Association.**

Dividend—Payment of cumulative—Discretion of directors—Profits—Reserve fund.

The memorandum of association of a co. provided that the profits should be applicable (1.) in payment of a "fixed cumulative preferential dividend" of 7 per cent. on the preference shares, (2.) in payment of a "cumulative dividend at a rate not exceeding 2s. per share" on the ordinary and B shares, (3.) the surplus (if any) was to be carried to a reserve fund till such fund reached a certain sum, and (4.) subject as aforesaid and to art. 126 of the articles of association the ordinary shares were to confer the right to one-half, and the B shares the right to the other half, of the profits or other moneys available for dividend which it should be determined to distribute.

Art. 126 provided that the directors should set aside out of the profits the sum provided for in clause 3, and might, before recommending any further dividend under (4.), set aside out of the profits a further reserve fund and carry forward such sums as might be deemed expedient:—

Held, that clause 2 fixed a rate of dividend and did not merely impose a limit, and that where the company had a sufficiency of profits to pay the whole of the unpaid balance of the cumulative dividend of 2s. a share on the ordinary and B shares they were bound, after providing for the dividend on the preference shares, to pay the whole of such unpaid balance, and the requirements of clause 2 were not complied with by merely paying any dividend not exceeding 2s. per share on the ordinary and B shares. *EYLING v. ISRAEL & OPPENHEIMER, LD.* - Eve J. [1917] W. N. 325; 34 T. L. R. 109

Objects—Legality—Anti-Christian company—Blasphemy—Capacity to receive gifts—Bequest to company—Validity—Conclusiveness of certificate of incorporation as to legality of objects—Blasphemy Act, 1697 (9 & 10 Will. 3, c. 32 [9 Will. 3, c. 35, Rev. Stat.])—Companies Act, 1900 (53 & 64 Vict. c. 48), s. 1.

The Secular Society, Ltd., was registered as a co. limited by guarantee under the Companies Acts, 1862 to 1893. The main object of the co., as stated in its memorandum of association, was "to promote . . . the principle that human conduct should be based upon natural knowledge and not upon supernatural belief, and that human welfare in this world is the proper end of all thought and action":—

Held, assuming that this object involved a denial of Christianity, (1.) that it was not criminal, inasmuch as the propagation of anti-Christian doctrines, apart from scurrility or profanity, did not constitute the offence of blasphemy; and (2.) (by Lord Dunedin, Lord Parker of Waddington, Lord Sumner, and Lord Buckmaster; Lord Finlay L.C. dissenting) that it was not illegal in the sense of rendering the co. incapable in law of acquiring property by gift, and that a bequest "upon trust for the Secular Society Limited" was valid.

COMPANY (Memorandum of Association)—
continued.

The principle of *Reg. v. Ramsay and Foote* (1883) 15 Cox, C. C. 231; Crib. & E. 126 applied.

Briggs v. Hartley (1850) 19 L. J. (Ch.) 416 and *Conan v. Milbourn* (1807) L. R. 2 Ex. 230 overruled.

The conclusiveness of the certificate of incorporation upon the legality of the objects of the co. considered.

Decision of the C. A. [1915] 2 Ch. 447 affirmed. *BOWMAN v. SECULAR SOCIETY, LD.*

H. L. (E.) [1917] A. C. 406; 86 L. J. (Ch.) 568; 117 L. T. 161; 1917] W. N. 169; 33 T. L. R. 376; 61 S. J. 478

Objects, Extension of—Petition for confirmation—Advertisement of new objects—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 9, sub-s. 3.

A procedure summons was issued on Jun. 5, 1917, by a co. asking for direction as to the advertising of a petition under s. 9 of the Companies (Consolidation) Act, 1908. The co. was possessed of ample working capital, and had no debenture debt. On Jul. 4, 1917, a petition was presented by the co. for confirmation of an alteration of its memorandum effected by a special resolution passed and confirmed at extraordinary general meetings, and giving extended powers to the co. specified in numerous new clauses. The petition showed that in addition to the co.'s regular business it had for some time past been carrying on certain brick works situate in Tunis which had been taken over in satisfaction of a bad debt due from a local agent, the land in question being vested in the names of trustees and worked by a syndicate. The proposed extension of the objects of the co. was to enable it to carry on this undertaking and others as part of its business.

Eve J., after referring to *In re John Brown & Co.* [1914] W. N. 434; 84 L. J. (Ch.) 245, said that the alterations would be sufficiently advertised if the notice inserted in the newspapers disclosed the real extent to which the contemplated additional powers went, and also indicated the ancillary powers which were consequently needed; and the judge in chambers must be satisfied of the sufficiency of the notice. He referred it to the Master to decide upon the papers in which the advertisement should appear, to include a local paper, but not one in Tunis. Such advertisement need not set out the resolution verbatim, but should be on the lines of the order made in chambers on Apr. 17, 1916, in *In re Devonshire Park and Baths Co.* [1916 D. 09].

The schedule to the order contained the form of the advertisement notice. Eve J. afterwards made an order confirming the resolutions for the extension of objects. *In re ATLANTIC PATENT FUEL CO.* - Eve J. [1917] W. N. 214. 253

Objects, Statement of—Ancillary powers—Declaration that all clauses independent—Ultra vires—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 3.

The memorandum of association of the E. co. contained an objects clause with thirty sub-clauses enabling the co. to carry on almost every conceivable kind of business which a

COMPANY (Memorandum of Association) —
continued.

co. could adopt. Sub-clause 1 authorized the co. to acquire, take over, work, and develop any licences, concessions, estates, plantations, and properties, and in particular four specified licences to collect rubber, balata, and other like substances from the Crown lands of a British colony; and sub-clause 12 authorized the co. to buy or otherwise acquire in any way and hold, sell, or deal with or in any stocks or shares of any co.; and the objects clause concluded with a declaration that every sub-clause should be construed as a substantive clause and not limited or restricted by reference to any other sub-clause or by the name of the co., and that none of such sub-clauses or the objects specified therein should be deemed subsidiary or auxiliary merely to the objects mentioned in the first sub-clause.

The E. co. underwrote and had allotted to it shares in the A. co., and these shares were transferred to the L. co.

All three cos. being in liquidation, the liquidator of the A. co. settled the L. co. on the A list of contributories and the E. co. on the B list in respect of these shares.

On an application by the liquidator of the E. co. to vary the B list by striking out that co.'s name on the ground that the underwriting was ultra vires that co. :—

Held, by the C. A., affirming the decision of Neville J., that the memorandum must be construed according to its literal meaning and that the underwriting was intra vires.

In re German Date Coffee Co. (1882) 20 Ch. D. 169, *In re Crown Bank* (1890) 44 Ch. D. 634, and *Stephens v. Mysore Reefs (Kangundy) Mining Co.* [1902] 1 Ch. 745 discussed.

Observations of Warrington L.J. and Lawrence J. as to whether such a memorandum complied with s. 3 of the Companies (Consolidation) Act, 1908. *In re ANGLO-CUBAN OIL, BITUMEN, AND ASPHALT CO.* - C. A. [1917] 1 Ch. 477; 86 L. J. (Ch.) 264; 116 L. T. 394; [1917] W. N. 58; 33 T. L. R. 196; 61 S. J. 282

Mortgage.

Registration—Subsequent sale of equity of redemption—Memorandum of payment of debt—Debt still existing—Cancellation of memorandum—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), ss. 96, 97.

This was an originating motion by the co. that a memorandum, dated Dec. 13, 1916, of the satisfaction of a mortgage, dated Dec. 9, 1915, and also the entry of such memorandum on the register, might be cancelled. The mortgage was made by the co. of freehold property to secure 1000*l.* and interest, which were also covenanted to be paid by the co. and two guarantors; particulars of the mortgage were duly registered with the Registrar of Companies pursuant to s. 93 of the Companies (Consolidation) Act, 1908, and duly entered in the co.'s register of mortgages pursuant to s. 100 of the Act; by an indenture, dated Dec. 1, 1916, in consideration of the sum of 450*l.*, the co. and guarantors conveyed the

COMPANY (Mortgage)—continued.

property to a purchaser in fee simple, subject to the payment of the principal sum of 1000*l.* and interest secured by the mortgage, the purchaser thereby covenanting with the co. and guarantors to pay the principal sum of 1000*l.* and interest to the mortgagees and to indemnify the co. and guarantors therefrom; the co. then executed the memorandum of satisfaction, dated Dec. 13, 1916, and caused the same to be registered without legal advice and under the bona fide belief that it was the proper course to take; owing to subsequent inquiries the co. ascertained from the Registrar of Companies that the memorandum ought not to have been executed and registered, and that an application should be made to the Court under s. 96 of the Companies (Consolidation) Act, 1908, for an order cancelling the memorandum; and there was on record in the Companies Registration Office an order correcting a misstatement in a memorandum, and another order cancelling two memoranda of satisfaction.

Peterson J. made the order. *In re O. LIGHT & Co.* - - - Peterson J. [1917] W. N. 77; 61 S. J. 337

Objects.

See above, Memorandum of Association, col. 92.

Prospectus.

See above, Directors, col. 90.

Reconstruction.

— Agreement to transfer—Stamp duty.
See AUSTRALIA, col. 53.

Registration.

— Mortgage.
See above, Mortgage, col. 94.
— Shares—Transfer.
See below, Shares, col. 96.

Shares.

— Bonus.
See CAPITAL OR INCOME, col. 77.
— Calls.
See ALIEN ENEMY, col. 18.

Purchase price of—Method of valuation—“Profits available for distribution as dividend”—Excess profits duty—Deduction—Finance (No. 2) Act, 1915 (5 & 6 Geo. 5, c. 89), Part II., s. 35; Part III.

Under the articles of association of a private co. there was to be no free market in respect of the ordinary shares of the co. so long as a purchaser selected by the board was willing to purchase the same at a fixed value, which was to be determined in manner defined by the articles, being based upon a three years' aggregate of the sums which would have been paid as dividend upon such ordinary shares “if in respect of each of such three years there had been distributed among the members the entire profits of such year available for distribution as dividend” :—

Held, that, in ascertaining the fixed value of a share, excess profits duty payable under Part III. of the Finance (No. 2) Act, 1915, must

COMPANY (Shares)—continued.

be deducted before the entire profits of any year available for distribution as dividend among the shareholders could be ascertained.

For this purpose excess profits duty is not analogous to income tax.

Att.-Gen. v. Ashton Gas Co. [1904] 2 Ch. 621 (affirmed [1906] A. C. 10) and *Johnson v. Chester-gate Hat Manufacturing Co.* [1915] 2 Ch. 338 distinguished. COLLINS v. SEDGWICK

Peterson J. [1917] 1 Ch. 179; 86 L. J. (Ch.) 156; 115 L. T. 763; [1916] W. N. 236; 22 T. L. R. 554

—Sale.

See above, Articles of Association, col. 85.

Transfer—Blank transfer—Registration—Rectification—Dispute between transferor and transferee—Alteration of register by secretary—Stamp duty—Validity—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 32—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 17.

Sect. 32 of the Companies (Consolidation) Act, 1908, is brought into operation so soon as there is a person alleging himself to be aggrieved by an improper entry in or omission from the register, and thereupon it is open to the person so aggrieved or to the co., or to any member of the co., to come to the Court under that section.

H. sold to M. H. & Co. (in whose employment he then was as general manager) 930 shares in the Navigation Co. for sums exceeding 18,000*l.* Of these shares 870 were transferred to M. H. & Co. or their nominees, but in respect of the remaining 60 shares, owing to some mistake as to their title, all they received was the certificate and a transfer in blank under seal executed by H. Subsequently M. H. & Co. filled in the blank transfer with the name of G. (who was a clerk in their employment) and left the same, purporting to be for a nominal consideration of 10*s.* and stamped with a 10*s.* stamp only, together with the certificate, for registration by the Navigation Co. H. (who had been dismissed from his employment by M. H. & Co., with whom he was now engaged in litigation), in reply to the usual notice given to him by the Navigation Co. of the intended transfer to G., asked that it should not be registered without further notice to himself, but owing to changes in the staff this circumstance was overlooked and G.'s name was placed on the register. Subsequently, and before a new certificate was issued to G., the secretary of the Navigation Co. having discovered the correspondence with H., purported to amend the register by striking out the entries showing G. to be the owner of the shares and restoring the entries showing H. to be the owner thereof. Some correspondence followed, in which H. took up the position that he was now on the register, and that if G. wished to be registered he should apply to rectify the register under s. 32 of the Companies (Consolidation) Act, 1908. As neither H. nor G. moved further in the matter, the Navigation Co. itself took out this summons under s. 32 asking for an order that the co. might be authorized to restore and retain G.'s name as the owner of the shares. Prior to the issue of the summons the transfer had been duly stamped with an ad valorem stamp

COMPANY (Shares)—continued.

and a penalty paid. It was not now disputed that the 60 shares in question formed part of the 930 shares sold by H. to M. H. & Co. The articles of association of the Navigation Co. did not require a transfer to be made by deed, but only by an instrument in writing:—

Held, that under the circumstances the summons was properly taken out by the Navigation Co.

Held, also, that the alteration in the register made by the secretary of the Navigation Co. was a mere nullity.

Held, also, that the registration of the transfer to G. having been made by the Navigation Co. without notice of the insufficiency of the stamp duty, and the ad valorem stamp duty and penalty having been since paid, the name of G. ought to remain on the register and the costs of this summons must be paid by H. *In re* LINDO-CHINA STEAM NAVIGATION CO. - Eve J.

[1917] 2 Ch. 100; 86 L. J. (Ch.) 723; 117 L. T. 212

Transfer—Registration—Limited power for directors to refuse to register transfer—Arbitrary exercise of power—Rectification of register—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 32.

A power for directors to refuse to register transfers of shares if "in their opinion it is contrary to the interests of the company that the proposed transferee should be a member thereof" only justifies a refusal to register upon grounds personal to the proposed transferee. It does not justify refusal to register transfers of single shares or shares in small numbers because the directors do not think it desirable to increase the number of shareholders, or because they think that the transfer is not bona fide, but that the transferee is the mere nominee of the transferor, and the transfer is made to increase the number of shareholders who will support him in a policy which the directors disapprove.

So *held* by Lord Oszens-Harley M.R. and Warrington L.J., affirming the decision of Eve J. (86 L. J. (Ch.) 612) and approving the judgment of Chitty J. in *In re Bell Brothers* (1891) 65 L. T. 245. Dissentient Scrutton L.J. *In re Bede Steam Shipping Co.* - C. A. [1917] 1 Ch. 123; 86 L. J. (Ch.) 65; 115 L. T. 580; [1916] W. N. 364; 33 T. L. R. 13; 61 S. J. 26

— *Transfer—Restrictions on transfer—Directors—Refusal of one director to attend directors' meeting—Inability to obtain quorum—Rectification of register of members.*

See above, *Directors*, col. 90.

Ultra Vires.

Agreement—Validating statute subject to adoption by resolution—Defective notices of meeting—Acquiescence immaterial—British Columbia, Appeal from.

Certain shareholders in, and directors of, a co. registered under the British Columbia Companies Acts entered into an agreement between themselves, the co. being a party, whereby an action against the directors as promoters was dismissed and all claims therein released by the

COMPANY (Ultra Vires)—continued.

co., and it was provided that the shares held by a group of shareholders, including directors, were to be surrendered in exchange at par for debentures to be created and issued by the co., the capital of the co. being reduced from three to two million dollars. The co., in pursuance of the agreement, obtained a private Act whereby the agreement was "validated, ratified and confirmed, subject to the same being adopted by a resolution passed by 75 per cent. of the shareholders present, personally or by proxy, at any meeting of the shareholders called for that purpose." A resolution was passed by the required majority, but the notices convening the meeting did not state the effect of the agreement, and the proxies of shareholders who before the meeting had no opportunity of knowing the contents of the agreement were used in support of the resolution. The articles of association provided that in case of special business the notice should state its general nature. Four years later, when, as it was contended, the shareholders had by their acts and conduct adopted and acquiesced in the agreement, the co. and two shareholders, suing on behalf of all, brought an action to set aside the trust deed creating the debentures, and the debentures issued thereunder:—

Held, that the Act made the adoption of the agreement in the manner thereby prescribed a condition to its validity; that the resolution was ineffective owing to the absence of notice of the contents of the agreement; and that the agreement and the acts done in pursuance of it were consequently ultra vires the co. and incapable of being made valid by acquiescence on the part of the shareholders. *PACIFIC COAST COAL MINES, LD. v. ARBUTHNOT*

J. C. [1917] A. C. 607; 86 L. J. (P. C.) 172

See above, *Articles of Association*, col. 85.

COMPANY—WINDING UP.

Alien Enemy. See *ALIEN ENEMY*.

Creditor, col. 98.

Debentures. See *COMPANY*.

Grounds, col. 109.

Life Assurance Company, col. 100.

Liquidator, col. 101.

Workmen's Compensation. See *WORKMEN'S COMPENSATION*.

Alien Enemy.

See *ALIEN ENEMY*, col. 17.

Creditor.

Judgment creditor—Petition of—Effect of pending appeal from judgment—Difference between bankruptcy and winding up—Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 51), s. 5, sub-s. 4.

An action by the A. Co. against the G. Co. was dismissed with costs, and the costs payable by the A. Co. were taxed at a sum of over 65,000*l.* The G. Co. served the A. Co. with a statutory demand for payment under s. 130 of the Com-

COMPANY—WINDING UP (Creditor)—*contd.*

panies (Winding up) Act, 1908, and on non-compliance with the demand filed a petition for the winding up of the A. Co. by the Court. In the meantime the A. Co., which had not applied to the judge who tried the action, or to the C. A. for a stay of execution on the judgment, lodged an appeal from the decision at the trial. The A. Co. had after that decision charged its assets with a sum admitted to be a fund for supporting this appeal:—

Held, by Sargant J., that the appeal was not a defence to the petition, but that a winding up order must be made which must lie in the office for a limited time, and that, if within that time the A. Co. gave security to the registrar's satisfaction for the amount of the judgment debt, the petition must be dismissed, the A. Co. paying the costs.

On appeal from this decision, by an arrangement suggested by the Court the A. Co. was given the alternative of giving to the C. Co. within the same limited period a security on its assets, subject as to those already specifically charged to the specific charges thereon, but free from the charge created after the judgment (the holders of the latter charge joining to postpone their security), the charge to be given to secure not only the amount of the judgment, but also to secure such costs of the appeal, not exceeding 10,000*l.*, as the A. Co. as appellants might be ordered to pay.

Per Sargant J.: The provisions of s. 5, sub-s. 4, of the Bankruptcy Act, 1914, do not apply, either directly or by analogy, to proceedings to wind up a co. *In re AMALGAMATED PROPERTIES OF RHODESIA* (1913), *LD.* - C. A. [1917] 2 Ch. 115; 86 L. J. (Ch.) 530; [1917] H. B. R. 136; 33 T. L. R. 414

Two insolvent companies—Administration—Cross-claims—Duty of each company to satisfy its indebtedness to the other before sharing in assets—Liberty for liquidator to distribute assets amongst creditors of each company other than the debtor company.

Two cos., each of which was now in liquidation, were indebted to one another, one in respect of arrears of calls, the other in respect of balance of account and money lent. According to the evidence, there was no prospect of either co. receiving a cash dividend in the liquidation of the other, if it was first bound to satisfy in full the amount of its indebtedness to the other:—

Held, that, according to the principle stated in *In re Rhodesia Goldfields* [1910] 1 Ch. 239 and cases there referred to, neither co. was entitled to receive a cash dividend in the liquidation of the other without first satisfying in full the amount of its indebtedness to the other, and that under these circumstances liberty should be given to the liquidator in the liquidation of each co. to distribute its available assets in payment of dividends to its other creditors without regard to the claim of the debtor co. in each case. *In re NATIONAL LIVE STOCK INSURANCE CO.* *In re NATIONAL GENERAL INSURANCE CO.* - Astbury J. [1917] 1 Ch. 628; 86 L. J. (Ch.) 391; [1917] H. B. R. 119; 116 L. T. 466

COMPANY—WINDING UP—*continued.***Debentures.****— Validity.**

See COMPANY, col. 89.

Grounds.

Shareholders' petition—"Just and equitable" clause—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 129, sub-s. 6—Appropriation of profits by managing director.

The power of the Court to order the winding up of a co. as being just and equitable under sub-s. 6 of s. 129 of the Companies (Consolidation) Act, 1908 (corresponding to s. 79 of the Companies Act, 1862), is not confined to cases the circumstances of which are *ejusdem generis* with those mentioned in the preceding sub-sections.

L., the managing director of a laundry co., entered into contracts in his own name for work to be done by the co., the profits of which amounted to 3268*l.*, of which L. accounted to the co. for 1038*l.* only. This he alleged was done with the consent of his co-directors. The capital of the co. consisted of 2000 *l.* shares, the majority of which were controlled by the managing director, and a co-director who was a business partner of L. In an action brought by two shareholders against the co. and L. to compel an account of the profits so received, an order was made that he should so account; but no payment was made or account rendered by L., and no steps were taken by the co. to compel him to account, and subsequent to the action a resolution of confidence in his management was passed by a majority of shareholders at a general meeting.

The plts. in the action having presented a petition to wind up the co. on the ground that in the circumstances it was "just and equitable" that the co. should be wound up:—

Held by the C. A., affirming the decision of the M.R., that a winding-up order should be made. *In re THE NEWBRIDGE SANITARY STREAM LAUNDRY, LD.* - C. A. (Ir.) [1917] 1 I. R. 67

Life Assurance Company.

*Deposit of 20,000*l.*—Liability of deposit—Company carrying on other classes of business—Costs of winding up—Deposits by liquidator as security for costs in actions which he was authorized by the Court to carry on—Assurance Companies Act, 1909 (9 Edw. 7, c. 49), s. 2, sub-ss. 1, 3; s. 3, sub-s. 2.*

The 20,000*l.* required to be deposited in Court by the Life Assurance Companies Acts, 1870 (33 & 34 Vict. c. 61) and 1872 (35 & 36 Vict. c. 41), and the Assurance Companies Act, 1909, is part of the general assets of the co., and is available for the general costs of the winding up and of deposits made by the liquidator as security for costs in proceedings which he has been authorized by the Court to carry on, so far as the same costs and deposits relate to the business of life assurance for which the deposit was made.

Semble, the deposit would not be liable for costs relating to other businesses carried on by the co., but, the liquidator not asking for any

COMPANY—WINDING UP (Life Assurance Company)—continued.

further order, the point was not decided. *In re NATIONAL STANDARD LIFE ASSURANCE CORPORATION* - - - Neville J. [1917] 1 Ch. 193; 86 L. J. (Ch.) 172; 115 L. T. 751; [1916] W. N. 396; 33 T. L. R. 65; 61 S. J. 146

Liquidator.

Voluntary liquidation—Insolvent company—Appointment of liquidator—Statutory meeting of creditors—Objection of creditors to one of two liquidators appointed by shareholders—Removing liquidator—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 188.

The object of s. 188 of the Companies (Consolidation) Act, 1908, in providing for a statutory meeting of creditors in a voluntary liquidation is to give the Court an opportunity of carrying out the wishes of the creditors according to its discretion, if they are reasonable, without a petition. In the case of an insolvent co. the wishes of creditors should have special weight in the appointment of liquidators. The fact that a liquidator appointed by the shareholders is also receiver for debenture-holders is a reasonable ground for the creditors desiring his removal. *In re KARAMELLI & BARNETT, LD.*

Neville J. [1917] 1 Ch. 203; 86 L. J. (Ch.) 207; [1917] H. B. R. 102; 115 L. T. 753; [1916] W. N. 386

Workmen's Compensation.

—Employer insured—Liability of insurance company and employer.

See **WORKMEN'S COMPENSATION**, col. 516.

COMPENSATION—Accident.

See **WORKMEN'S COMPENSATION**.

Compulsory taking of land—Notice to treat—Railway—Special Act—Deposited plans—Incorporation in special Act—Cardiff Railway Act, 1906 (6 Edw. 7, c. clvii.), ss. 2, 3, 4, 13, 14, 15—*Railways Clauses Consolidation Act, 1845* (8 & 9 Vict. c. 20), ss. 14, 16—*Railways Clauses Act, 1863* (26 & 27 Vict. c. 92), ss. 9—11.

By the Cardiff Railway Act, 1906, which incorporated the Railways Clauses Acts so far as they were applicable to and not varied by or inconsistent therewith, the Cardiff Ry. Co. was empowered to make a short line joining its ry. with that of the Taff Vale Ry. Co. "in the line and according to the levels shown on the deposited plans." The deposited plans indicated that the junction line would be carried on an embankment in order to bring it up to the level of the two rys. which were to be connected. Alongside the Taff Vale Ry. was a narrow strip of land which that co. had acquired for the purpose of sidings not yet constructed. The Cardiff Co. originally proposed to purchase so much of this strip as was necessary to enable them to carry their embankment over it, but the special Act as passed provided that the Cardiff Co. should not purchase any portion of the strip, but should acquire an easement or right of using the same for the purpose of the junction authorized. The Cardiff Co. served upon the Taff Vale Co. a notice to treat for the purchase of an easement or right over the

COMPENSATION—continued.

portion of the strip in question for the purpose of making a solid embankment across it in order to effect the junction.

The Taff Vale Co. brought an action to restrain the Cardiff Co. from proceeding upon their notice to treat on the ground that they were not authorized by their Act to construct a solid embankment and that the notice was consequently invalid. The Taff Vale Co. contended that an embankment would prevent their using the strip for the purpose of sidings and that the junction line ought to be carried over the strip upon a bridge. The Cardiff Co. contended that the deposited plans indicated an embankment, and that under s. 14 of the Railways Clauses Consolidation Act, 1845, and ss. 9—11 of the Railways Clauses Act, 1863, they were bound to make the connection in that way.

Astbury J. held that the notice was valid and dismissed the action:—

Held, on appeal, following *North British Ry. Co. v. Tod* (1846) 12 Cl. & F. 722, that the deposited plans were obligatory on the co. only so far as they were expressly or by implication made so by the special Act, whereas in that Act the only matters expressly referred to were the "line" and "levels." The plans dealt with land which the co. proposed to purchase and indicated what should be done on that land when purchased. The conditions were changed when purchase was prohibited, and the qualified incorporation of the general Acts applied to land which the Cardiff Co. could not acquire. There being two practicable modes whereby the co. might cross the strip, namely, an embankment and a bridge, and Parliament not having prescribed the mode by which the crossing was to be effected, the Cardiff Co. were not entitled to select that mode which was the more burdensome to the Taff Vale Co., and that co. ought not to be required to grant an easement more extensive than the purposes of the junction demanded. The notice to treat was therefore invalid.

Decision of Astbury J. reversed. **TAFF VALE Ry. Co. v. CARDIFF Ry. Co.** - C. A. [1917] 1 Ch. 299; 86 L. J. (Ch.) 129; 115 L. T. 800

Compulsory taking of land—Value, Potential—Award—Evidence of arbitrator—R. S. Quebec, 1909, art. 5795.

The respondent municipality expropriated the falls of a river and adjacent lands, belonging to the appellants, for the purpose of electric light works which it had been there carrying on as lessor; the municipality had previously expropriated lands higher up the river and was there constructing a reservoir in order to increase the power of the falls. Arbitrators assessed the compensation at 75,700 dollars; the appellants sued upon the award. At the trial they called one of the arbitrators who put in evidence notes showing how the amount awarded had been calculated. From these notes it appeared that in order to estimate the potential value of the property the arbitrators had taken the extra power due to the respondents' reservoir and capitalized an estimated

COMPENSATION—continued.

profit arising therefrom. There were concurrent findings of the Courts in Quebec that the award was based upon the value to the buyer, and not the value to the sellers:—

Held, that there was ample evidence to support the findings, and that the award was properly set aside. *FRASER v. CITY OF FRASERVILLE* - J. C. [1917] A. C. 187; 83 L. J. (P. C.) 91; 116 L. T. 258; 33 T. L. R. 179

— Mines—Subsidence.

See MINES, col. 278.

— Railway.

See above, col. 101, and *CANADA*, Nova Scotia, col. 73, and Ontario, col. 74.

— Workmen's.

See WORKMEN'S COMPENSATION.

COMPETENT WITNESS.

See CRIMINAL LAW, col. 132.

COMPLAINT—Prosecutrix—Indecent assault.

See CRIMINAL LAW, col. 131.

COMPROMISE—Probate action.

See WILL, col. 463.

COMPULSORY PILOTAGE—Collision—Ships.

See SHIPPING, col. 410.

COMPULSORY PURCHASE.

See COMPENSATION, col. 101.

"CONCLUSIVE PROOF OF CARGO SHIPPED."

See SHIPPING, col. 393.

CONDEMNATION—Prize Court.

See PRIZE COURT, col. 318.

CONDITION—Bill of lading.

See SHIPPING, col. 393.

— Bill of sale.

See BILL OF SALE, col. 67.

— Payment—Sale of goods.

See SALE OF GOODS, col. 377.

— Precedent—Power for lessee to determine lease.

See LANDLORD AND TENANT, col. 247.

— Sale of goods.

See SALE OF GOODS, col. 378.

CONDITIONAL AGREEMENT—Sale of goods

—Buyer in possession—Sale to third person.

See SALE OF GOODS, col. 366.

CONDITIONAL CONTRABAND.

See PRIZE COURT, col. 319.

CONDITIONAL REVOCATION—Will—Codicil.

See WILL, col. 464.

CONFESSION—Criminal law.

See CRIMINAL LAW, col. 124.

— Divorce.

See DIVORCE, col. 144.

"CONFIRMED BANKER'S CREDIT."

See SALE OF GOODS, col. 377.

CONFLICT OF LAWS.

See CANADA, col. 70, and *POWER OF APPOINTMENT*, col. 308.

CONSENT—Covenant by lessee for self and assigns not to sub-let without lessor's.

See LANDLORD AND TENANT, col. 244.

"CONSEQUENCES OF WARLIKE OPERATIONS."

See SHIPPING, col. 407.

CONSIDERATION—Assignment.

See CHOSE IN ACTION, col. 82, and *INSURANCE (LIFE)*, col. 204.

— Voluntary settlement.

See SETTLEMENT (PROPERTY), col. 389.

CONSIGNMENT—Non-delivery.

See RAILWAY, col. 338.

CONSTITUTIONAL POWERS—Limits of—Commonwealth of Australia Constitution.

See AUSTRALIA, col. 52.

CONSTRUCTION—Reservoir.

See CONTRACT, col. 108.

— Will.

See WILL, col. 475.

CONTENTS—Lost will—Evidence.

See PROBATE, col. 334.

"CONTINGENCY BEYOND CONTROL OF SELLER OR BUYER."

See SALE OF GOODS, col. 378.

CONTINGENT BEQUEST—Will—Leasehold—Destination of profits till vesting.

See WILL, col. 472.

CONTINUING BREACH—Covenant—Repair.

See LANDLORD AND TENANT, col. 247.

CONTINUOUS VOYAGE.

See PRIZE COURT, col. 320.

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See PRIZE COURT, col. 317.

CONTRACT.

Agreement, col. 105.

Alien Enemy. See ALIEN ENEMY.

Bailment, col. 105.

Bankrupt. See BANKRUPTCY.

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Commission. See COMMISSION.

Corporation, col. 106.

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CONTRACT—continued.

Insurance. See INSURANCE (BURGLARY).

Landlord and Tenant. See LANDLORD AND TENANT.

Marriage. See MARRIAGE.

Married Woman. See HUSBAND AND WIFE.

Master and Workman. See WORKMEN'S COMPENSATION.

Military Service, col. 110.

Mistake. See below, Surveyor.

Rescission. See PRINCIPAL AND AGENT.

Restraint of Trade. See RESTRAINT OF TRADE.

Sale, col. 111.

Sale of Goods. See SALE OF GOODS.

Sale of Real Estate. See VENDOR AND PURCHASER.

Sale of Shares. See PRINCIPAL AND AGENT.

Sale of Ships, col. 111.

Service, col. 111.

Shipping. See SHIPPING.

Surveyor, col. 111.

Trust Property. See SOLICITOR.

Ultra Vires. See above, Corporation.

Vendor and Purchaser. See VENDOR AND PURCHASER.

Void or Voidable, col. 112.

Writing, col. 113.

Agreement.

Negotiations—Whether parties ad idem.
LOVE & STEWART, LD. v. INSTONE (S.) & Co.
H. L. (E.) 33 T. L. R. 475

Alien Enemy.

— Sale of land—Power of attorney.
See ALIEN ENEMY, col. 20

Bailment.

Contract to do work upon goods and re-deliver—Breach—Goods burnt by accidental fire on contractor's premises—Liability—Fires Prevention (Metropolis) Act, 1774 (14 Geo. 3, c. 78), s. 86.

The plaintiff entrusted books to the deft., a bookbinder, to be bound under a contract to deliver them when bound to the plt. within a reasonable time as and when required by him. The plt. having required the deft. to deliver the whole of the books then bound, the deft. failed to deliver them within a reasonable time, and they were subsequently burnt in an accidental fire on his premises:—

Held, that the deft. was liable in damages for the loss of the books; and that he was not absolved by the provision in s. 89 of the Fires Prevention (Metropolis) Act, 1774, that no action shall be maintained against any person in whose house or building any fire shall acci-

CONTRACT (Bailment)—continued.

dentally begin, nor shall any recompense be made for any damage suffered thereby, any law, usage, or custom to the contrary notwithstanding. *SHAW & Co. v. SYMMONS & SONS*
Avory J. [1917] 1 K. B. 799; 86 L. J. (K. B.) 549; 117 L. T. 91; [1917] W. N. 92; 33 T. L. R. 239

Bankrupt.

See BANKRUPTCY, col. 57.

Cancellation.

See below, Void or Voidable, col. 112.

Commission.

See COMMISSION, col. 82.

Corporation.

Ultra vires—Public buildings—Insurance of—Agreement—Proof that agreement is ultra vires—Onus.

In 1904 the corporation of P. effected an insurance on certain public buildings in their area with the Municipal Mutual Insurance, Ltd. The agreement contained schedules in which property could from time to time be entered and was to last for five years. In 1908 a continuation agreement was entered into under which the corporation agreed to insure all the properties mentioned in the first agreement for five years from the expiration of the fifth year after the last entry of any insurance in any of the schedules. In 1916 the corporation refused to pay further premiums to the insurance co., alleging that the agreements were ultra vires, that they extended over too long a period of time, and that the actuarial position of the co. rendered the agreements unreasonable and improvident. They further alleged that there was no consideration for the payment of the premiums:—

Held, that an agreement made by a public corporation is not to be judged by the event. If, on the face of it, it be not entirely improvident, or unreasonable, or foreign to or unnecessary for the express or implied purposes of the corporation, or detrimental to the public welfare, it will not be held to be ultra vires merely because the bargain contained in it turns out to be a bad one for the corporation.

Further, that the onus was on the corporation to show that the insurance scheme, the co. itself and its re-insuring cos., were actuarially unsound. In the present case the consideration for the insurance was the entering into the agreements and mutual promises to pay premiums and indemnify against loss. The agreements were not ultra vires on the score of time; and inasmuch as the co. had never failed to meet their obligations, nor had their re-insuring cos. ever failed to meet theirs, the corporation had not discharged that onus. *MUNICIPAL MUTUAL INSURANCE, LD. v. PONTEFRAC T CORPORATION* - Sankey J. 15 L. G. R. 299; 116 L. T. 671; 33 T. L. R. 234

Custom.

Sale of goods—Conveyance by particular route.

See SALE OF GOODS, col. 368.

CONTRACT—continued.**Docks.**

— Construction—"Traffic."

See Docks, col. 148.

Illegality.

Public policy—Assignment of present and future earnings—Covenants in restraint of personal freedom—Not to leave present employment without sanction of assignee.

By an indenture made between the mortgagor (a clerk in the employment of the defts.) and the plt. (a money-lender) the mortgagor, who was indebted in various sums to creditors whom the money-lender agreed to pay on having the repayment secured to him in manner thereafter appearing, assigned to the plt. (inter alia) all the salary, wages, or other moneys then or thereafter during the continuance of the security to become due to him under his employment with the defts. or with any other employers to hold to the plt. absolutely, but subject to a proviso for redemption. The mortgagor then covenanted that he would repay the plt. by certain instalments; that during the continuance of the security he would not, without the express sanction in writing of the plt., determine his engagement with the defts. or other his employers for the time being; that he would not borrow or attempt to borrow any money or part with, sell, or pledge his furniture, chattels, or effects, or obtain or endeavour to obtain credit or permit any one to pledge his credit (save his wife in the case of ordinary tradesmen's books for weekly settlement) or make himself or his property answerable for any sum of money whether legally or morally; and that he would not, without the plt.'s consent in writing, remove from his then dwelling-house or take any other. The plt., alleging that the mortgagor had committed breaches of the covenants contained in the indenture, gave notice of the assignment to the defts. and brought an action to recover salary due from them to the mortgagor:—

Held, affirming the decision of the Div. Ct. [1916] 2 K. B. 44, that the contract was entire and indivisible, and was bad as being contrary to public policy inasmuch as it unduly and improperly fettered the mortgagor's liberty of action and the free disposal of his property. **HORWOOD v. MILLAR'S TIMBER AND TRADING Co.** C. A. [1917] 1 K. B. 305;

86 L. J. (K. B.) 190; 115 L. T. 805; [1916] W. N. 403; 33 T. L. R. 86; 61 S. J. 114

— Suspension—Dissolution.

See PRINCIPAL AND AGENT, col. 312.

Sale of goods—Implied term—Contract to ship aluminium—Prohibition against export without a licence—Implied obligation—Prohibition against buying, selling, or dealing in aluminium—Shipment from foreign country—Defence of the Realm (Consolidation) Regulations, 1914, reg. 30A.

By a contract made in London, and dated Aug. 19, 1915, the appellants sold to the respondents, both parties being resident in this country, 50 tons of aluminium "to be shipped by steamer(s) to Vladivostok during December, January next," at a price including cost and

CONTRACT (Illegality)—continued.

freight; payment to be by cash against documents in London. At the date of the contract there was, to the knowledge of both parties, a prohibition against the export of aluminium from this country except on licence granted by the British Government. On Dec. 7, 1915, an order was made applying reg. 30A of the Defence of the Realm (Consolidation) Regulations, 1914, to aluminium. That regulation provides that "no person shall, without a permit . . . (a) buy, sell, or deal in; or (b) offer or invite an offer or propose to buy, sell, or deal in; or (c) enter into negotiations for the sale or purchase of or other dealing in, any war material" to which the regulation might be applied by order, whether or not the sale, purchase, or dealing was effected in the United Kingdom.

No aluminium was shipped under the contract. The buyers claimed damages for breach of contract, and the dispute was referred to arbitration. The umpire found that the parties in fact contemplated that the aluminium would be shipped from this country, and that neither of the parties contemplated or intended the performance of the contract by shipment of American aluminium; that the sellers duly applied for a licence to export the aluminium from this country, but a licence was refused, and that the failure to ship was due to their inability to obtain a licence; and that the sellers did not, after Dec. 7, 1915, or at all, apply for a permit to purchase aluminium in America so as to ship it from there, but if they had so applied the proper authority in this country would not have granted a permit:—

Held, upon the assumption that the shipment was limited to a shipment from the United Kingdom, that the contract did not impose upon the sellers an absolute obligation to ship or to pay damages in default of shipment, and that therefore the sellers, who had used reasonable diligence to obtain a licence to ship, were not liable in damages to the buyers.

Held, further, that the shipment was not limited by the contract to a shipment from the United Kingdom; that reg. 30A of the Defence of the Realm (Consolidation) Regulations prohibited any dealing in the widest sense in aluminium in any country by persons amenable to British law, and therefore prohibited the shipment by the sellers of aluminium on and after Dec. 7, 1915, from any country; and that consequently before there was any default on the part of the sellers the further performance of the contract became illegal, and they were not liable in damages. *In re AN ARBITRATION BETWEEN THE ANGLO-RUSSIAN MERCHANT TRADERS, LD. AND JOHN BATT & CO. (LONDON)* C. A. [1917] 2 K. B. 679; 86 L. J. (K. B.) 1360; 116 L. T. 805; 61 S. J. 591

Impossibility.

Performance—Prohibition by Ministry of Munitions—Effect of prohibition.

In 1914 the defts. contracted with the plt.s., a water authority, to construct certain water-works. The contract provided that the works were to be completed in six years, and that the plt.s.' engineer might grant the defts. an exten-

CONTRACT (Impossibility)—continued.

sion of time in the event of any difficulties or impediments howsoever occasioned. In 1916, when a substantial amount of work had been done, the Ministry of Munitions, acting under the Defence of the Realm Acts and Regulations, required the defts. to cease work. In an action by the water authority against the contractors for a declaration that the contract was still in existence and that the defts. were bound to perform it :—

Held, that as the prosecution of the work had become illegal, and the duration of the interruption was such as fundamentally to change the conditions of the contract, and could not have been in the contemplation of the parties when it was made, the plts. were not entitled to the declaration claimed.

Decision of the C. A. ([1917] 2 K. B. 1) affirmed. *METROPOLITAN WATER BOARD v. DICK, KERR & Co.* - H. L. (E.) 34 T. L. R. 113; [1917] W. N. 352; 62 S. J. 102

Lighting of streets—Contract with local authority—Default in lighting “from any cause whatever”—Restrictions due to Lighting Order under the Defence of the Realm (Consolidation) Order, 1914.

By an agreement made in 1911, which was to remain in force till Dec. 25, 1917, the plts., an electric lighting co., contracted to light the streets of a borough, and by the penalty clause agreed with the corporation that “in case of any default in lighting the lamps or any of them during the time in which the same ought to be lighted as aforesaid from any cause whatever” the latter should be at liberty to deduct from any payment certain sums. Owing to a Lighting Order dated Dec. 15, 1915, under the Defence of the Realm (Consolidation) Regulations, 1914, restricting the lights in the borough, the number of lamps actually lighted during the year 1916 was very small, and in an action by the plts. to recover 1290*l.*, the total of four quarterly payments as fixed by the agreement, the defts. claimed to deduct sums which by the penalty clause they were to be at liberty to deduct in the event of lamps remaining not lighted “from any cause whatever”; further, that by reason of the Lighting Order the performance of the contract had become impossible or within reasonable probability impossible :—

Held, that the words “from any cause whatever,” though wide enough to be unlimited, were in fact limited to causes over which the plts. had or ought to have control—causes in which there had been some default on their part. The plts. were accordingly entitled to recover the full amount claimed without deduction.

The principle as to the performance of the contract laid down in *Leiston Gas Co. v. Leiston-cum-Sizewell U. D. C.* [1916] 2 K. B. 428 followed and applied. *WYCOMBE BOROUGH ELECTRIC LIGHT AND POWER CO. v. CHEPPING WYCOMBE CORPORATION* - Bailhache J. 15 L. G. R. 658; 33 T. L. R. 489

Insurance.

—Statement forming basis of contract.

See INSURANCE (BURGLARY), col. 201.

CONTRACT—continued.**Landlord and Tenant.**

See LANDLORD AND TENANT, col. 241.

Marriage.

—Engagement ring—Right to return of ring.

See MARRIAGE, col. 270.

Married Woman.

See HUSBAND AND WIFE, col. 194.

Master and Workman.

See WORKMEN'S COMPENSATION.

Military Service.

Emergency legislation—Local authority—Employee joining Army—Volunteer—Continuance of civil pay—Resolution—Contract—Local Government (Emergency Provisions) Act, 1916 (6 & 7 Geo. 5, c. 12), s. 1.

On Sept. 12, 1914, the Cardiff Corporation passed a resolution “that any officer or servant of the corporation . . . who may volunteer and be accepted as such and serve Great Britain afloat or ashore during this European war be allowed leave of absence during his naval or military services; that he be reinstated upon his return with no loss of position or emoluments consequent upon his enforced absence; that the corporation pay him . . . during such period such sums as with the pay he receives from Government will make up his full salary or wages.”

On the strength of this resolution, and on Jul. 7, 1915, the plt., a tramcar driver in the employment of the corporation at 1*l.* 11*s.* 6*d.* a week, volunteered and was accepted for service and served in a Welsh regiment. The corporation refused to pay him the difference between his wages and the 8*s.* 2*d.* a week he was paid as a soldier, and he brought an action against them to recover it :—

Held, that the plt. was entitled to recover the amount claimed. The resolution of Sept. 14, 1914, though a domestic resolution, and probably ultra vires, was also the offer of a contract, which, having been accepted, was by the operation of s. 1 of the Local Government (Emergency Provisions) Act, 1916, validated and had become a promise incapable of unilateral alteration and was binding to the extent to which it could have been given had the Act been in force, i.e., the sub-section made it a binding promise retrospectively. *SHIPTON v. CARDIFF CORPORATION* Rowlatt J. 15 L. G. R. 587; 116 L. T. 687; [1917] W. N. 175

Mistake.

See below, Surveyor, col. 111.

Rescission.

—Stockbroker and client—Executed contract induced by fraud—Restitutio in integrum—Lapse of time—Limitation of action.

See PRINCIPAL AND AGENT, col. 314.

Restraint of Trade.

See RESTRAINT OF TRADE, col. 351.

CONTRACT—continued.**Sale.**

See LANDLORD AND TENANT, col. 241,
SALE OF GOODS, col. 365, and
VENDOR AND PURCHASER, col. 448.

Sale of Goods.

See SALE OF GOODS, col. 365.

Sale of Real Estate.

— Right to general damages for loss of bargain.
See VENDOR AND PURCHASER, col. 449.

Sale of Shares.

— Principal and agent.

See PRINCIPAL AND AGENT, col. 314.

Sale of Ships.

Particulars—Incorrect statement as to dead-weight capacity—Condition or warranty—"Not accountable for errors in description"—Seller not liable.

The defts., being desirous of selling two steamships to the plts., gave to the plts. particulars in writing of the ships which stated, inter alia, that the dead-weight capacity of each ship was 460 tons. The particulars also contained the words "not accountable for errors in description." The plts., relying upon the particulars, agreed to buy the ships, and a memorandum of the contract, which did not in terms refer to the particulars, was signed by the parties. The ships were delivered to, and accepted by, the plts., and it was subsequently discovered that the dead-weight capacity of each ship was only 360 tons. In an action by the plts. to recover damages for a breach of a condition of the contract, and, alternatively, for breach of warranty:—

Held, first, on the evidence, that the memorandum was not intended by the parties to contain all the terms of the contract, and that the statement as to the dead-weight capacity was a term of the contract; secondly, that the discrepancy between the statement and the fact was a difference of degree and not of kind, and that the statement was, therefore, a warranty and not a condition; and, thirdly, that, the statement being a warranty, the defts. were, by reason of the words "not accountable for errors in description," not liable for damages for breach of warranty. *HARRISON (T. & J.) v. KNOWLES & FOSTER* - Bailhache J. [1917] 2 K. B. 606; 86 L. J. (K. B.) 1490; 117 L. T. 363; 22 Com. Cas. 293; 33 T. L. R. 467; 61 S. J. 695

Service.

See EDUCATION, col. 153, and WORKMEN'S COMPENSATION, col. 517.

Shipping.

See SHIPPING.

Surveyor.

Local government—Agreement by surveyor to act at arbitration—Scale of remuneration for services—Mistake innocently induced—Rectification of agreement under seal of local authority—Rescission—Quantum meruit—Ryde's scale.

CONTRACT (Surveyor)—continued.

In 1914 a correspondence took place between the plt., who was a surveyor, and the clerk of the guardians of the debt. union, with a view to the plt. acting as valuer for the guardians at an arbitration between them and the B. Union, arising out of the dissolution of the A. Union, the transfer of its property and liabilities to the B. Union, and the inclusion in the debt. union of S., a parish hitherto in the A. Union. In the opinion of the Court the plt. throughout the correspondence believed and intended that he was to be remunerated on Ryde's scale on the basis of the value of the whole of the properties of the A. Union, while the guardians believed and intended that the scale was to be applied only to the interest of their union in those properties. The contract for employment of the plt. as valuer was originally drawn in the sense understood and intended by him; but the draft was altered to the sense understood and intended by the guardians, and in that form it was executed by the plt. and sealed with the seal of the guardians:—

Held, on the evidence, that the plt.'s mistake had been induced innocently by the guardians, and that he was entitled to rescission of the agreement on the principle of *Wilding v. Sanderson* [1897] 2 Ch. 534.

Held, also, that he was entitled to remuneration on a quantum meruit on the principle of *Lawford v. Billericay R. C.* [1903] 1 K. B. 772, the Court, however, declining to assess the remuneration with any direct reference to Ryde's scale, and expressing its disapproval of the principle of basing remuneration on the amount of the valuation.

Quære, whether an agreement under the seal of a local authority, and requiring their seal for its validity, can be rectified. *FARADAY v. TAMWORTH UNION* - - - Younger J.
86 L. J. (Ch.) 436; 15 L. G. R. 258; 81 J. P. 81

Trust Property.

— Sale of—Trustee.

See SOLICITOR, col. 423.

Ultra Vires.

See SCABOVE, CORPORATION, col. 106.

Vendor and Purchaser.

See VENDOR AND PURCHASER, col. 451.

Void or Voidable.

Contract to be "void" in a certain event—Rule that a party cannot take advantage of his own wrong.

By a contract made in 1913 a French co. (called the builders) agreed to construct a steamer for a shipping co. (called the purchasers) to be completed by Jan. 30, 1915, subject to an extension of time if the construction was delayed by an unpreventable cause beyond the control of the builders; and in case the builders should be unable to deliver the steamer within, in the event of France becoming engaged in a European

CONTRACT (Void or Voidable)—continued.

war, eighteen months from the date agreed by the contract for completion "thereupon this contract shall become void and all money paid by the purchasers shall be repaid to them with interest accrued thereupon at 5 per cent."

The steamer was in course of construction when on Aug. 2, 1914, France became engaged in a European war, and had ever since continued to be so engaged; and the builders had been prevented by unpreventable causes beyond their control from completing the steamer by Jan. 30, 1915, and had ever since been prevented by the same causes. The eighteen months expired on Jul. 30, 1916, and the builders contended that the contract thereupon became void, and that the purchasers were only entitled to the repayment of the moneys paid by them with interest thereon. The purchasers contended that the contract became voidable only at their option:—

Held, that the contract became void and not merely voidable at the option of the purchasers, and that as the avoidance of the contract had not been brought about by any wrongful act or default on the part of the builders the latter were not prevented from alleging that the contract was void.

Where a contract contains a provision that it shall become void in a certain event, on the happening of that event the contract becomes void; but, unless it clearly provides to the contrary, the contract is subject to a condition or proviso that a party shall not take advantage of his own wrong, and therefore a party whose wrongful act or default has brought about the avoidance of the contract cannot allege its invalidity. *In re AN ARBITRATION BETWEEN THE NEW ZEALAND SHIPPING CO. AND THE SOCIETE DES ATELIERS ET CHANTIERS DE FRANCE - C. A. [1917] 2 K. B. 717; 33 T. L. R. 545; 117 L. T. 71*

See *SALE OF GOODS*, col. 448.

Writing.

See *LANDLORD AND TENANT*, col. 249, and *SALE OF GOODS*, col. 449.

CONTRACTUAL DUTY—Overcrowding street railway—Common nuisance—"Criminal case."

See *CANADA*, col. 71.

CONTRIBUTION—General average.

See *SHIPPING*, col. 415.

CONTROLLER—Alien enemy—Business.

See *ALIEN ENEMY*, col. 17.

— *Company*—Business directed to be wound up—Trading with the enemy.

See *ALIEN ENEMY*, col. 18.

— *Enemy firm*—Power of, to sue for debts in name of firm.

See *EMERGENCY LEGISLATION*, col. 155.

CONVERSION—Devise in strict settlement—Successive life estates—Trust to invest proceeds of sale in purchase of freeholds or in personalty—Power to vary—Consent of tenant for life—Investment on mortgage—Deaths of remaindermen—Foreclosure—Settlement of foreclosed land

CONVERSION—continued.

— *Reconversion—Time for determining rights of remaindermen—Trust for sale of foreclosed land—Conveyancing Act, 1911 (1 & 2 Geo. 5, c. 37), s. 9—Retrospective operation.*

A testator who died in 1861 devised his real estate in strict settlement and empowered the trustees, with the consent of the tenant for life, to sell the same or any part thereof, and directed them with such consent to invest the proceeds of sale in the purchase of freehold land or in the public funds or on real securities to be respectively settled and held to and upon such uses and trusts corresponding as nearly as might be with the uses and trusts therein declared concerning the land sold, with power for the trustees from time to time with the like consent to vary such investments.

In the events which happened the material limitations of the will resulted as follows:—To the use of E., T., and J. successively for life in the order named, with remainder to the use of E., T., and J. as tenants in common in tail general, with cross-remainders between them in tail general, with remainders over. In 1867 part of the land was sold and the proceeds invested in mortgage of freehold land. In 1871 E. died, leaving an only daughter. In 1881 T. died a bachelor. In 1898 the surviving trustee foreclosed, and in 1899, by a deed appointing a new trustee to which J. was party, the foreclosed land was conveyed to the uses and upon the trusts of the will as if the same had been thereby specifically devised.

On the death of J. in 1916 without issue, his executrix, who was also executrix of T., claimed that the foreclosed land in fact represented personalty and was subject to a trust for sale by virtue of s. 9 of the Conveyancing Act, 1911, and that she was entitled to two-thirds of the proceeds. The only daughter of E. claimed the foreclosed land as tenant in tail under the limitations of the will, E., T., and J. never having disentailed:—

Held: (1.) That, owing to the power to vary investments, the crucial time for determining the character of each investment was the death of J., the surviving tenant for life, and that the mortgages having been then foreclosed the mere foreclosure operated as a reconversion of the property into realty, and that there was no equity on the part of any cestui que trust under the will to have the personal character of the investment restored to it.

The principle of *Laves v. Bennett* (1785) 1 Cox, 167, and *In re Isaacs* [1894] 3 Ch. 506 applied.

(2.) That by the deed of 1899, to which all the parties able to control the character of the investment of the trust fund were parties, the foreclosed land was duly adopted as real estate and settled to the uses of the will;

(3.) That, although sub-s. 5 of s. 9 of the Conveyancing Act, 1911, may apply to land foreclosed before the commencement of the Act and remaining at the passing of the Act in the condition determined by the foreclosure, it would be unreasonable to extend the retrospective operation of the section to a case like the present where previously to the commence-

CONVERSION—continued.

ment of the Act the foreclosed land had been definitely accepted and settled as land and rights acquired thereby.

(4.) That even if, by virtue of sub-s. 5, s. 9 of the Act was to be deemed to apply to foreclosed lands as from the date of foreclosure, the terms of both sub-s. 3 and sub-s. 4 had in the present case been complied with sufficiently to prevent the reconversion of the land into money under sub-s. 1 and 2 of the section; and

(5.) That the foreclosed land had become legally vested in the daughter of E. in tail as the heir in tail of E. *In re BOGG. ALLISON v. PAICE* - - - Sargant J. [1917] 2 Ch. 239; 80 L. J. (Ch.) 536; 116 L. T. 714; [1917] W. N. 100

— Forfeiture—Felony.

See FORFEITURE, col. 181.

— Lunatic—Realty.

See LUNATIC, col. 269.

— Postponing.

See WILL, col. 476.

Real estate—Building agreement—Lease—Option to tenant to purchase reversion—Notice to exercise option—Death of purchaser insolvent—Purchase never completed—Re-entry by landlord.

At the date of a testator's death in 1897 certain premises, of which he was owner in fee, were the subject of a building agreement, under which leases were to be granted to M. This agreement contained a clause enabling M. to purchase the freehold reversion in the whole or any part of the premises affected by the agreement, if notice was given before a fixed date, and as from the date of such notice he was to be deemed the purchaser of the specified reversion. On Sept. 28, 1899, M., having become entitled to leases of twenty houses, gave notice of his desire to purchase the freehold reversion of the houses. M. died insolvent on Dec. 25, 1899, the day fixed for completion, and no steps were taken to enforce the contract. The trustees of the testator subsequently re-entered upon the whole property, including the twenty houses, in exercise of a power in the agreement enabling them so to do:—

Held, that the giving of the notice exercising the option was a conversion once for all of the realty into personalty, and the mere fact that the exercise of the option was not followed by completion of the purchase could not undo the conversion which had actually taken place, and therefore that the twenty houses must be treated as personalty of the testator as from Sept. 28, 1899.

Held, further, that the re-entry of the testator's trustees did not work a reconversion into realty. *In re BLAKE. GAWTHORNE v. BLAKE* Eve J. [1917] 1 Ch. 18; 86 L. J. (Ch.) 160; 115 L. T. 663; 61 S. J. 71

Really directed to be sold—Partial failure of objects of conversion—Resulting trust to settlor—Whether property descends as personalty.

There is no distinction between the words "with the consent of" and "at the request of" when applied to a tenant for life under a settle-

CONVERSION—continued.

ment, and in neither case does their introduction prevent a trust for the sale of realty from being imperative.

Where in the case of realty directed by a settlement to be sold the legal estate is outstanding in trustees for sale, the property cannot be said to be "at home" merely because the settlor at his death was the only person beneficially interested in the proceeds of sale, and the only case in which the property results to the settlor as realty, instead of personalty, is where the purposes for which conversion was directed have failed ab initio. *In re FENNELL. WRIGHT v. HOLTON* - - - Neville J. 34 T. L. R. 86; [1917] W. N. 343; 62 S. J. 103

CONVEYANCE—Transfer on sale—Equitable interest—Queensland—Stamp duty.
See AUSTRALIA, col. 53.

CONVEYANCING ACTS.

See CONVERSION, col. 114, LANDLORD AND TENANT, col. 248, and VENDOR AND PURCHASER, col. 449.

CONVICTION—Confirmed by quarter sessions—Issue of distress warrants by justice—Conviction and confirmation quashed by High Court.
See JUSTICES, col. 238.

CO-ORDINATION—Contracts—Bankruptcy.
See BANKRUPTCY, col. 57.

CO-OWNERSHIP—Association to secure particular benefits to members.
See TRUST, col. 444.

COPY—Notice of appeal—Service.
See ARMY, col. 45.

COPYRIGHT—Picture postcards—Similar idea—Similar legend—Different expression—No infringement—Copyright Act, 1911 (1 & 2 Geo. 5, c. 46), ss. 1, 2, 7; s. 14, sub-s. 1; s. 35.

The plt. was the owner of the copyright in a series of picture postcards, one of which represented a soldier reading the orders of the day, with the legend underneath, "And then we have all the rest of the day to ourselves." The deft. published a picture postcard also representing a soldier reading the orders of the day, and with a similar legend underneath, but the expression and get-up of the two cards were entirely different:—

Held, that there was no infringement of the plt.'s copyright. *McCRUM v. EISNER* Peterson J. 117 L. T. 536

Telegraphic code—Compilation of words in themselves meaningless—"Original literary work"—Copyright Act, 1911 (1 & 2 Geo. 5, c. 46), ss. 1, 35.

The plts. published a code of made-up words considered suitable for cabling purposes. Each word, which of itself was meaningless, consisted of five letters only, and differed from every other word in the code in at least two out of the five letters. In the preparation of the code all words which were unpronounceable were eliminated, as were also all those which might lend themselves to error in transmission:—

COPYRIGHT—*continued*.

Held, that the code was an "original literary work" within the meaning of that expression in s. 1, sub-s. 1, of the Copyright Act, 1911. *D. P. ANDERSON & Co., LD. v. THE LIEBER CODE CO.* *Bailhache J.* [1917] 2 K. B. 439; 86 L. J. (K. B.) 1220; 117 L. T. 361; [1917] W. N. 193; 38 T. L. R. 420.
61 S. J. 545

CO-RESPONDENT—Divorce.

See DIVORCE.

CORPORATION—Criminal liability.

See CRIMINAL LAW, col. 127.

—Municipal.

See CANADA, col. 63, and CONTRACT, col. 109.

—Petitioning creditor.

See BANKRUPTCY, col. 61.

CORROBORATION—Accomplice.

See CRIMINAL LAW, col. 127.

—Bastardy.

See BASTARDY, col. 65

C.I.F. CONTRACT.

See SALE OF GOODS, col. 367.

COSTS—Action by bankrupt—Application by defendant to stay.

See BANKRUPTCY, col. 64

—Appeal—Security.

See COMPANY (WINDING UP), col. 98.

—Arbitration—Discretion of arbitrator—Power to order successful claimant to pay costs.

See ARBITRATION, col. 26.

—Bankruptcy—Trustee—Deed of arrangement.

See BANKRUPTCY, col. 59.

—Bill of—Solicitor—Solicitor-trustee—Taxation by co-trustee—"Party chargeable."

See SOLICITOR, col. 421

—Counsel—Fees.

See below, *Taxation*, col. 113.

—County court.

See COUNTY COURT, col. 119.

—Distribution—Public Trustee—Withdrawal fee—Incidence.

See REVENUE, col. 353.

—Divorce.

See DIVORCE, col. 142.

—Judgment for—Chose in action—Legal assignment.

See CHOSE IN ACTION, col. 82.

—Licensing justices.

See LICENSING ACTS, col. 252.

—Mortgage.

See MORTGAGE, col. 281.

—Prize Court.

See PRIZE COURT, col. 331.

COSTS—*continued*.

—Security for.

See ARBITRATION, col. 26, COMPANY—WINDING UP, col. 98, and PRIZE COURT, col. 331.

—Solicitor.

See SOLICITOR, col. 420.

Taxation—Agreement to settle action on terms arranged by senior counsel—Issue of briefs to counsel before notice of trial or discovery—Consent to pay solicitor and client costs in action—Charges for briefs to counsel—Practice—*R. S. C. (Ir.), O. LXV., rr. 19, 20, 64.*

The parties to an action, after the pleadings had been closed, agreed to refer the settlement of the action to their respective senior counsel:—

Held, that the issue of briefs to senior and junior counsel was a reasonable mode of instructing them for the purpose of the settlement, and was not improper, although there had been no discovery obtained or notice of trial given. Charges for and in respect of such briefs and the fees thereon may be allowed on taxation as solicitor and client costs. *O'CONNOR v. BLAIN, CAMPBELL, & McLEAN, LD. - Dodd J. (Ir.)* [1917] 2 I. R. 618

Taxation—Assessment of gross sums—Company—Debenture-holders' action—Notice of judgment—Scheme of arrangement—Notices of meetings—Practice—Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 120—*R. S. C., 1883, O. LXV., r. 8; r. 27, sub-r. 38A, and Appendix N, Heads 28, 34, 41, 42, 43, 51, 52, 53.*

The *R. S. C., 1883*, as to the costs of preparing and sending out notices, do not, expressly or by analogy, apply to (a) notices of judgment in a debenture-holder's action, or (b) notices of meetings of creditors and members of a co. to agree to an arrangement under s. 120 of the Companies (Consolidation) Act, 1908.

The Directions of the Ch. Div. Judges of May, 1896, do not prescribe merely a new mode of "service" of a judgment in an ordinary debenture-holder's action, but substitute the sending of notices of the judgment for service thereof.

In the case of the notices of judgment and of meetings aforesaid the taxing Master may, under *O. LXV., r. 27, sub-r. 38A*, assess the costs thereof at gross sums, and in that sub-rule the words "other cause" are not to be read as ejusdem generis with those matters which are expressly mentioned in the sub-rule, but the taxing Master may act on the sub-rule in cases where no misconduct or negligence on the part of the solicitors whose costs are being taxed is imputed.

In re Johnston [1904] 1 Ch. 132 explained. *In re COMMONWEALTH OIL CORPORATION, LD. PEARSON v. SAME* - Sargant J. [1917] 1 Ch. 404; 86 L. J. (Ch.) 348; 116 L. T. 402; [1917] W. N. 24; 61 S. J. 315

See SOLICITOR, col. 421.

—Taxation—Company—Winding up.

See COMPANY—WINDING UP, col. 98.

Taxation—Trustee-solicitor—Charges of undue influence—Fees—Instructions for brief—

COSTS—continued.

Leading counsel—Discretion of taxing Master
—*R. S. C.*, 1883, *O. LV.*, r. 27, sub-rr. 29, 38.

A deft. in an action against whom unfounded charges of misconduct have been made by the plt. is not the less entitled to his costs reasonably incurred in rebutting those charges because the plt. has abstained from claiming any relief against that deft. and has professed in the pleadings to sue him only as trustee. In taxing the costs of such a deft. he should be allowed the costs of briefing two counsel. *BRUTY v. EDMUNDSON* - Eve J. [1917] 2 Ch. 285 : 86 L. J. (Ch.) 677 ; [1917] W. N. 243 : 61 S. J. 694

Affirmed on appeal - G. A. [1917] W. N. 833

— Winding up—Company.

See *COMPANY—WINDING UP*, col. 100.

CO-TRUSTEE—Bill of costs—Taxation.

See *SOLICITOR*, col. 421.

COUNSEL—Fees.

See *COSTS*, col. 118.

COUNTY COURT.

Admiralty Jurisdiction. See *SHIPPING*.

Bankruptcy. See *BANKRUPTCY*.

Company, col. 119.

Costs, col. 119.

Defence, col. 120.

Equitable Execution. See above, *Costs*.

Friendly Society. See *FRIENDLY SOCIETY*.

Judgment Debtor, col. 120.

Jurisdiction, col. 121.

New Trial, col. 121.

Remitted Action. See above, *Costs*.

Admiralty Jurisdiction.

See *SHIPPING*, col. 392.

Bankruptcy.

See *BANKRUPTCY*, col. 58.

Company.

Plaintiff—Praecipe for default summons—Filing of by agent of company not a solicitor—Legality of—County Court Rules, O. LIV., r. 1.

A limited co. can be represented in a county court by an agent who is not a solicitor. *KINNELL & Co. v. HARDING, WALL & Co.*

Div. Ct. [1917] W. N. 388 ; 34 T. L. R. 145

Costs.

Equitable execution—Receiver — Costs — Scale—"Amount of debt and costs"—Practice—County Court Rules, O. XIII., r. 14.

O. XIII., r. 14, of the County Court Rules provides that where a receiver is appointed by way of equitable execution, and "the amount of debt and costs" due to the applicant exceeds 50*l.* and does not exceed 100*l.*, the total amount to be allowed for the costs of obtaining the appointment of the receiver shall not exceed

COUNTY COURT (Costs)—continued.

"2½ per cent. of the amount of such debt and costs" :—

Held, that, in determining, for the purpose of taxation, "the amount of debt and costs," the costs incurred by the applicant in obtaining an interim injunction to restrain the defendant from dealing with the property the subject-matter of the application for the appointment of a receiver pending the hearing of the application ought not to be added to the amount of the judgment debt. *CARRINGTON v. DEANE*

Div. Ct. [1917] 1 K. B. 717 ; 86 L. J. (K. B.) 743 ; 116 L. T. 561 ; [1917] W. N. 62

— Judgment debtor—"Travelling expenses"—Single or return fare.

See below, *Judgment Debtor*, col. 120.

Remitted action—Jurisdiction of county court judge—County Court Rules, 1903 and 1914, O. LIII., r. 17—County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 66, 113, 116.

Order LIII., r. 17, of the County Court Rules, 1903 and 1914, which provides that "Where the demand is unliquidated, and the plaintiff recovers less than the amount claimed, the judge may, if he thinks fit, order that his costs be taxed on the scale applicable to the amount claimed, or any intermediate scale," is not ultra vires, and it applies to actions remitted to the county court as well as to actions commenced there.

Everall v. Brown [1905] 2 K. B. 196 ; [1906] 2 K. B. 884 applied. *SARGEANT v. WATTS*

Div. Ct. [1917] 2 K. B. 624 ; 86 L. J. (K. B.) 1237 ; 117 L. T. 374 ; [1917] W. N. 236 ; 33 T. L. R. 499 ; 61 S. J. 612

Defence.

Statutory, Notice of—Practice—Set-off—Claim for price of goods sold—Breach of warranty—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 53—County Court Rules, 1903 and 1914, O. X., rr. 10, 18, 21.

To a claim for the price of goods sold the defence of a breach of warranty is not a set-off within O. X., r. 10, of the County Court Rules, 1903 and 1914 ; nor has it by the passing of the Sale of Goods Act, 1893, become a statutory defence within r. 18 of that order ; therefore notice of such a defence need not be given under the order.

Semble, a statutory defence is one which has its origin only in a statute. *BRIGHT v. ROGERS* - Div. Ct. [1917] 1 K. B. 917 ; 86 L. J. (K. B.) 804 ; 117 L. T. 61 ; 61 S. J. 370

Equitable Execution.

See above, *Costs*, col. 119.

Friendly Society.

See *FRIENDLY SOCIETY*, col. 182.

Judgment Debtor.

"Travelling expenses"—Return fare—County Court Rules, 1903 and 1914, O. XXV., r. 26.

The "reasonably sufficient" sum for travelling expenses payable under O. XXV., r. 26

COUNTY COURT (Judgment Debtor)—*continued.*
of the County Court Rules, 1903 and 1914, to a judgment debtor, who does not reside in the district of the county court from which a judgment summons is issued, means a sum sufficient to pay for the journey from the debtor's residence to the court and back again. *WARD v. NIELD* - Div. Ct. [1917] 2 K. B. 832; 117 L. T. 447; [1917] W. N. 257

Jurisdiction.

Prohibition—Action brought in district where no part of cause of action arose—Step taken by defendant in proceedings—Waiver.

The plts., a firm carrying on business at West Hartlepool, entered into a contract by correspondence through the post with the deft., who carried on business at Croydon, for the purchase of certain goods. The deft. having refused to carry out the contract, the plts. applied, under s. 74 of the County Courts Act, 1888, to the registrar of the West Hartlepool County Court for leave to commence an action against the deft. in that court on the ground that part of the cause of action arose in that district. The plts.' affidavit, upon which the application was made, stated that the facts relied on as constituting part of the cause of action were "that the written offer made by the proposed plaintiffs and accepted by the proposed defendant in respect of the sale of the goods, for the breach of which contract an action is proposed to be brought, was made and posted by the proposed plaintiffs at West Hartlepool." The registrar granted the leave sought, and the plaint was issued. The deft. being uncertain as to the nature of the plts.' claim, his solicitor wrote to the plts. as follows: "I have been instructed by the defendant to defend this action, and subject and without prejudice to any point which the defendant may raise as to the jurisdiction or otherwise, I send you the enclosed demand for further particulars of the plaintiffs' claim." The enclosed demand required the plts. to give particulars of the date and terms of the contract, and whether such contract was verbal or in writing, and if in writing identifying the document containing the same, and also of the date of the alleged breach, and concluded with a statement that the solicitor would accept service of all proceedings in the action at his office as specified. The plts. having delivered the particulars demanded, the deft. at once applied for prohibition. The judge at chambers refused the writ. The deft. appealed.

The Div. Ct. allowed the appeal, holding (1.) that the mere posting of the letter containing the offer of purchase was no part of the cause of action, and (2.) that the demand by the deft.'s solicitor for further particulars of the plts.' claim, and his undertaking to accept service on the deft.'s behalf did not amount to a waiver of his right to object to the jurisdiction of the West Hartlepool County Court. *CLARKE BROTHERS v. KNOWLES* - Div. Ct. [1917] W. N. 358

New Trial.

Excessive damages—Appeal—Practice.

No appeal lies from the decision of a county court judge granting a new trial on the ground

COUNTY COURT (New Trial)—*continued.*
that the damages awarded by a jury were excessive, if it appears that the judge applied the right rule of law in considering whether a new trial should be granted.

How v. London and North Western Ry. Co. [1892] 1 Q. B. 391 applied. *COLE v. DE TRAFFORD AND WIFE* - Div. Ct. [1917] 1 K. B. 911; 86 L. J. (K. B.) 764; 117 L. T. 224; 33 T. L. R. 249; 61 S. J. 354

Remitted Action.

See above, Costs, col. 120.

COUNTY COURT RULES, 1903 and 1914,
O. XXV., r. 26.

WARD v. NIELD - Div. Ct. [1917] 2 K. B. 832;
117 L. T. 447; [1917] W. N. 257

COURT—Bankruptcy—Discretion.

See **BANKRUPTCY**, col. 60.

— Barmote.

See **MINES**, col. 277

— Jurisdiction.

See **BANKRUPTCY**, col. 58, and
COUNTY COURT, col. 121.

COURT-MARTIAL—Field general.

See **ARMY**, col. 29.

COURT OF APPEAL.

See **APPEAL**, col. 23.

COURT OF CRIMINAL APPEAL.

See **CRIMINAL LAW**, col. 124.

COURT OF INQUIRY—Army.

See **ARMY**, col. 30, and **CRIMINAL LAW**,
col. 128.

COURTS (EMERGENCY POWERS) ACTS.

See **EMERGENCY LEGISLATION**, col. 157;
and **INTERNATIONAL LAW**, col. 216.

COVENANT—After-acquired property.

See **BANKRUPTCY**, col. 60, and
SETTLEMENT, col. 385.

— Insurance (Fire).

See **LANDLORD AND TENANT**, col. 245.

— Lease.

See **LANDLORD AND TENANT**, col. 244.

— Repair.

See **LANDLORD AND TENANT**, col. 247.

— Restraint of personal freedom—Public policy.

See **CONTRACT**, col. 107.

— Separation deed.

See **DIVORCE**, col. 148.

— Settlement—After-acquired property.

See **SETTLEMENT**, col. 385.

CREDITORS—Assignment for benefit of.

See **BANKRUPTCY**, col. 59.

— Statutory meeting of.

See **COMPANY—WINDING UP**, col. 101.

"**CRIMINAL CASE**"—Appeal—Privy Council

—Canada.

See **CANADA**, col. 71.

CRIMINAL LAW.*Appeal to C. C. A.**Adjournment*, col. 124.*Bail*, col. 124.*Evidence in C. C. A.*, col. 124.*Miscarriage of Justice*—*Certificate of Trial Judge*, col. 125.*Evidence*, col. 125.*No Substantial Miscarriage* col. 125.*Misdirection*—*Admission of Guilt*, col. 125.*Defendant's Case not put to the Jury*, col. 125.*False Pretences*, col. 125.*Receiving Stolen Goods*, col. 125.*Sentence*, col. 126.*Shorthand Notes*, col. 126.*Bigamy*. See below, *Evidence*.*Canada*. See CANADA.*Children*. See above, *Appeal to C. C. A.*—*Sentence*.*Confession*. See above, *Appeal to C. C. A.*—*Evidence in C. C. A.**Conspiracy*, col. 127.*Corporation*, col. 127.*Deposition*. See below, *Evidence*.*Evidence*—*Accomplice*, col. 127.*Accused, Statement by*, col. 128.*Bigamy*, col. 129.*C. C. A.* See above, *Appeal to C. C. A.**Deposition*, col. 129.*False Declaration*, col. 129.*False Pretences*, col. 130.*Habitual Criminal*, col. 130.*Identity*, col. 131.*Indecent Assault*, col. 131.*Larceny*, col. 131.*Murder*, col. 131.*Perjury*, col. 132.*Receiving Stolen Goods*, col. 132.*False Declaration*. See above, *Evidence*.*False Pretences*, col. 133.*High Treason*, col. 133.*Indecent Assault*. See above, *Evidence*.*Judicial Committee (Privy Council)*.
See JUDICIAL COMMITTEE.*Larceny*. See above, *Evidence*.*Malicious Injury*, col. 133.**CRIMINAL LAW—continued.***Murder*. See above, *Evidence*.*Perjury*. See above, *Evidence*.*Receiving Stolen Goods*, col. 134.*Summary Jurisdiction*. See JUSTICES.*Treason*. See above, *High Treason*.*Vagrancy*. See JUSTICES.**Appeal to C. C. A.***Adjournment.*

An application for adjournment of a case likely to last some time should be made to the Court some days before the case is in the list. *REX v. ROBERTS (JOSIAH MORRIS)* - C. C. A. 12 Cr. App. C. 252

*Bail.**Appeal to H. L.*

The Court has no power, after dismissing an appeal, to admit appellant to bail until the Att.-Gen. decides whether he will grant his fiat to appeal to the H. L. *REX v. THOMPSON (ARTHUR)* C. C. A. 12 Cr. App. C. 261

Bail granted where the C. C. A. had dismissed an appeal and the Att.-Gen. had given a certificate enabling the appellant to appeal to the H. L. *REX v. THOMPSON (ARTHUR)* C. C. A. 12 Cr. App. C. 278

Evidence in C. C. A.

Power to receive evidence of acts done by prisoner after conviction—Letter containing confession—Privilege—Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 9—R. S. C., O. LVIII., r. 4.

By s. 9 of the Criminal Appeal Act, 1907, "the Court of Criminal Appeal may, if they think it necessary or expedient in the interest of justice . . . exercise in relation to the proceedings of the Court any . . . powers which may for the time being be exercised by the Court of Appeal on appeals in civil matters."

By the R. S. C., 1883, O. LVIII., r. 4, "The Court of Appeal shall have . . . full discretionary power to receive further evidence upon questions of fact . . . in any case as to matters which have occurred after the date of the decision from which the appeal is brought."

After his conviction for murder the prisoner wrote from the prison in which he was confined a letter which had a most material bearing on the case. The letter had been destroyed by the person to whom it was addressed. The prosecution gave notice to the prisoner that, upon the hearing of an application which he intended to make to the C. C. A. for leave to appeal, an application would be made by the prosecution for leave to call witnesses for the purpose of proving the destruction of the letter and producing a copy in evidence:—

Held, that the evidence was admissible, and that no privilege attached to the letter. *REX v. ROBINSON* - C. C. A. [1917] 2 K. B. 108; 86 L. J. (K. B.) 773; 117 L. T. 160; 81 J. P. 152; [1917] W. N. 135; 12 Cr. App. C. 226

CRIMINAL LAW (Appeal to C. C. A.)—continued.

Miscarriage of Justice.

Certificate of Trial Judge.

Disapproval of verdict.

Where there is evidence to go to the jury and the questions at issue are purely questions of fact, and the jury convict, the Court will not interfere with the verdict, although the judge gives a certificate that in his opinion the verdict was wrong. *REX v. PERFECT (ELIZABETH)*

C. C. A. 12 Cr. App. C. 273; 117 L. T. 641

Evidence.

Insufficient evidence—Conviction quashed.

REX v. CALBY (WILLIAM BIRCH)

C. C. A. 12 Cr. App. C. 231

REX v. CHADWICK (WALTER, WILLIAM) AND OTHERS - - - C. C. A. 12 Cr. App. C. 247

REX v. GRAY (JOHN HENRY)

C. C. A. 12 Cr. App. C. 244

See below, Evidence.

No Substantial Miscarriage.

Acquittal of prisoner—Statement by judge as to previous convictions of prisoner.

REX v. HENRY SMITH - - C. C. A. [1917]

W. N. 289; 13 Cr. App. C. 9; 25 Cox, C. C. 271; 34 T. L. R. 9

Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4.

Proviso to s. 4, sub-s. 1, of the Criminal Appeal Act applied. *REX v. DOUBLEDAY (ROSE)* - - - C. C. A. 12 Cr. App. C. 240

REX v. ROSENSON (GOODMAN)

C. C. A. 12 Cr. App. C. 235

Misdirection.

Admission of Guilt.

It is a misdirection to treat as an admission of guilt an expression which is consistent with innocence. *REX v. SCHOFIELD (JOSEPH)*

C. C. A. 12 Cr. App. C. 191

Defendant's Case not put to the Jury.

A summing-up which in effect recommends a verdict of guilty, and does not adequately put the deft.'s case, will invalidate a conviction. *REX v. FRAMPTON (WALTER JAMES)*

C. C. A. 12 Cr. App. C. 202

False Pretences.

Intent to defraud.

Except in the clearest case, there must be a direction to the jury on a charge of obtaining by false pretences that an intent to defraud must be proved before they can convict.

Conviction quashed on the ground that at the trial there was no direction to the jury as to the intent to defraud. *REX v. SECOMBE (WILLIAM EDWARD)* - - - C. C. A. 12 Cr. App. R. 275

Receiving Stolen Goods.

Knowledge that goods were stolen—Corroboration of accomplice—Insufficient direction to jury.

On a charge of receiving a pony knowing it to have been stolen, the jury, in answer to questions C.C.D.

CRIMINAL LAW (Appeal to C. C. A.)—continued.

put to them by the deputy chairman of quarter sessions, found that the explanation given by the appellant was one which might reasonably be true, but returned a verdict of guilty against the appellant. An accomplice pleaded guilty to the theft, but there was no corroboration of his evidence against the appellant on the charge of receiving. The jury were not properly directed as to knowledge by the appellant that the pony was stolen, nor as to the necessity for corroboration of the evidence given against the appellant by the accomplice:—

Held, that, owing to there being no corroboration of the evidence given by the accomplice, the appeal must be allowed and the conviction quashed. *REX v. NORRIS* C. C. A. 116 L. T. 160; 86 L. J. (K. B.) 810

Sentence.

Children—Children Act, 1908 (8 Edw. 7, c. 67), s. 102, sub-s. 3.

The certificate under the Children Act, 1908 (8 Edw. 7, c. 67), s. 102, sub-s. 3, which enables a Court to sentence a person under the age of fourteen years to imprisonment ought not to be granted merely because no "place of detention" within ss. 106 and 108 of that statute has been provided. *REX v. FOSTER (FREDERICK)* - - C. C. A. 12 Cr. App. C. 164

Hard labour—Common law misdemeanour—Criminal Justice Administration Act, 1914 (4 & 5 Geo. 5, c. 58), s. 16.

Hard labour may be lawfully imposed in a sentence for defamatory libel. *REX v. BARLOW (ALFRED)* - - C. C. A. 12 Cr. App. C. 185

Sentence reduced.

REX v. DOUBLEDAY (ROSE)

C. C. A. 12 Cr. App. C. 240

REX v. FOX (ARCHIBALD)

C. C. A. 12 Cr. App. C. 180

REX v. GILLON (JAMES)

C. C. A. 12 Cr. App. C. 251

REX v. GOLDING (FREDERICK ARTHUR) AND ALLPORT (JAMES) - C. C. A. 12 Cr. App. C. 183

REX v. HADDON (WILLIAM)

C. C. A. 12 Cr. App. C. 242

REX v. LOFTUS (JOHN)

C. C. A. 12 Cr. App. C. 238

REX v. MALKIN (THOMAS)

C. C. A. 12 Cr. App. C. 277

REX v. MAYES (JOHN)

C. C. A. 12 Cr. App. C. 178

REX v. SPALDING (ANTHONY THOMAS)

C. C. A. 12 Cr. App. C. 253

Shorthand Notes.

It is essential that the shorthand writers should take down and transcribe every word said at the trial by those whom it is their duty to report and record every incident thereat. *REX v. AUSTIN (THOMAS)* - C. C. A. 12 Cr. App. C. 171

Bigamy.

See below, Evidence, col. 129.

CRIMINAL LAW—continued.**Canada.****— Common nuisance.**

See CANADA, col. 71.

Children.

See above, **Appeal to C. C. A.—Sentence**, col. 126.

Confession.

See above, **Evidence in C. C. A.**, col. 124.

Conspiracy.

Liability to military service—Certificate of exemption—Military Service Act, 1916 (5 & 6 Geo. 5, c. 104)—Military Service Act, 1916 (Session 2) (6 & 7 Geo. 5, c. 15).

Where a man would be liable to military service but for the fact that he holds a certificate of exemption, that fact does not prevent its being an offence to conspire to defeat the provisions of the Military Service Acts by enabling him to escape military service. **REX v. BISHOP, GRANTWAY AND TRICHTER** - C. C. A.

[1917] W. N. 383; 34 T. L. R. 139

Corporation.

Mens rea—Railway—Rates and tolls—False account of goods—Intent to avoid payment—"Person"—Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 98, 99—Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 2.

By s. 98 of the Railways Clauses Consolidation Act, 1845, every person being the owner or having the care of any carriage or goods passing or being upon a ry. shall, on demand, give to the collector of tolls an exact account in writing signed by him of the number or quantity of goods conveyed by any such carriage; and if the goods conveyed by any such carriage, or brought for conveyance as aforesaid, be liable to the payment of different tolls, then such owner or other person shall specify the respective numbers or quantities thereof liable to each or any of such tolls.

By s. 99, if any such owner or other such person fail to give such account, or if he give a false account, with intent to avoid the payment of any tolls payable in respect of the goods, he shall be liable to a penalty:—

Held, that owners of goods may, without a mens rea, be guilty of giving a false account with intent to avoid payment of tolls, and that if their manager actually gives the false account with intent to avoid the payment the owners, though a limited co., are liable. **MOUSELL BROTHERS, LD. v. LONDON AND NORTH-WESTERN RY. CO.**

Div. Ct. [1917] 2 K. B. 836; 15 L. G. R. 706; 81 J. P. 305

Deposition.

See below, **Evidence**, col. 127.

Evidence.**Accomplice.**

Corroboration—Cross-examination of prisoner as to another offence—Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1.

CRIMINAL LAW (Evidence)—continued.

On the trial of a prisoner for forgery of a will two accomplices were called for the prosecution, who deposed that the will was forged by the prisoner in pursuance of a scheme by which they were to endeavour fraudulently to obtain an advance from third persons to a legatee under the will on the faith of his legacy. One of the accomplices was to figure as the legatee and the other as an executor. They said that the prisoner told them that he objected to appearing as executor himself because he had forged a will under a similar scheme some years before, that on that occasion he had played the part of executor, and that if he did it again suspicion might be directed to him. The prisoner gave evidence in his own defence, and denied, amongst other things, the accomplices' statement that he had committed the earlier forgery. In cross-examination counsel for the prosecution went into details of that earlier forgery and asked questions tending to show that the prisoner had in fact committed it:—

Held, that the cross-examination was rightly admitted. If the prisoner had in fact been guilty of a similar forgery in connection with the earlier will, the probability was that the accomplices' story that he told them so and gave that as his reason for not being executor under the later will was true, and therefore the answers to the questions might afford corroboration of their evidence. The cross-examination was consequently relevant to the issue at the trial, and was not open to objection under the Criminal Evidence Act, 1898. **REX v. KENNAWAY**

C. C. A. [1917] 1 K. B. 25; 86 L. J. (K. B.) 300; 12 Cr. App. C. 147; 115 L. T. 720; 25 Cox, C. C. 559; [1916] W. N. 346; 81 J. P. 99

Accused, Statement by.**Statement made at a military court of inquiry—Admissibility.**

Rule 124 (L) of the Rules of Procedure made under s. 70 of the Army Act, 1881 (44 & 45 Vict. c. 58), which provides that "any confession, statement or answer to a question made or given at a court of inquiry shall not be admissible in evidence against an officer or soldier . . .," applies only to military tribunals and does not make a statement made at a court of inquiry inadmissible in evidence at a criminal trial in a civil Court. **REX v. COLPUS AND BOORMAN. REX v. WHITE**

C. C. A. [1917] 1 K. B. 574; 86 L. J. (K. B.) 459; 12 Cr. App. C. 193; 116 L. T. 703; [1917] W. N. 37; 33 T. L. R. 184; 81 J. P. 135; 61 S. J. 269

Statement made to police officer before arrest—Admissibility.

Statements made by an accused person to a police officer before arrest may be admissible in evidence against the accused, though made in answer to questions put by the officer. If there is evidence of an offence a police officer is justified in putting questions to a suspected person in order to ascertain whether or not there is reasonable ground for apprehending him, but this course should be very sparingly resorted to. If a police officer has determined to effect

CRIMINAL LAW (Evidence)—continued.

an arrest, or if the person is in custody, then he should ask no questions which will in any way tend to prove the guilt of such person from his own mouth. *REX v. CROWE AND MYERSCOUGH* C. C. A. 81 J. P. 288

Bigamy.**Foreign marriage—Expert evidence.**

The prisoner was indicted for marrying a woman in England while his wife, whom he had married in England, was alive. At the trial the prisoner, an Egyptian by birth and a Mahomedan by religion, who was not specially conversant with the laws of Egypt, stated in the course of his evidence that before the first marriage in England he had been duly married in Egypt according to the rites and ceremonies of that country to an Egyptian woman whom he had divorced after the first and before the second marriage in England:—

Held, that the evidence of some person conversant with the marriage laws of Egypt was necessary in order to prove the alleged marriage in Egypt, and that the prisoner could not establish that marriage by tendering his own evidence of the performance of a ceremony and leaving the Court to presume the effect thereof.

Whether the union of a man and a woman according to the law of a State which recognizes polygamy will be regarded in England as a marriage, *quaere*. *REX v. NAQUIB* - C. C. A. [1917] 1 K. B. 359; 86 L. J. (K. B.) 709; 116 L. T. 640; 12 Cr. App. C. 187; [1916] W. N. 427; 81 J. P. 116

C. C. A.

See above, Appeal to C. C. A., col. 124.

Deposition.

Admissibility of—Witness—Too ill to travel—“Any credible witness”—*Indictable Offences Act*, 1848 (11 & 12 Vict. c. 42), s. 17.

Sect. 17 of the Indictable Offences Act, 1848, provides that, if upon the trial of an indictment it shall be proved (inter alia) by “any credible witness” that a person whose deposition shall have been taken before a justice is “so ill as not to be able to travel,” the deposition may be read as evidence in the prosecution:—

Held, that the credible witness need not be a medical man.

Reg. v. Stephenson (1862) L. & C. 165 followed.

Reg. v. Welton (1862) 9 Cox, C. C. 296 considered. *REX v. NOAKES (JOHN)* - C. C. A. [1917] 1 K. B. 581; 86 L. J. (K. B.) 594; 12 Cr. App. C. 204; 116 L. T. 705; [1917] W. N. 59; 81 J. P. 140; 33 T. L. R. 201; 61 S. J. 285

False Declaration.

Separation allowance—Prima facie case—Naval and Military War Pensions Act, 1915 (5 & 6 Geo. 5, c. 83), s. 5.

Case stated by justices of Pontypridd.

The respondent, Margaret Evans, was summoned on a charge of knowingly making a false declaration for the purpose of obtaining a separation allowance, contrary to s. 5 of the Naval and Military War Pensions Act, 1915 (5 &

CRIMINAL LAW (Evidence)—continued.

6 Geo. 5, c. 83). She was the mother of one Morris Evans, who enlisted in Jan., 1916. In Nov., 1916, with a view of obtaining a separation allowance as a dependant of her son, she made a declaration that up to the time of his enlistment he allowed her 2l. a week towards her support. Morris Evans was from May, 1914, until the time of his enlistment a draper's assistant at Brecon, receiving 30s. a week wages, with a commission of 10s. or 12s. when the annual sale was held, and living in. After the information had been laid against her the respondent went to her son's employer and requested him, in the event of his being asked what wages he had paid her son, to over-state the amount. The son was at the time of the hearing on military service abroad and could not be called as a witness. The magistrates held that the above facts were not sufficient in law to afford any evidence that the son had not other means beside his wages from which he might have allowed his mother 2l. a week, and they dismissed the summons.

The Div. Ct. *held* that the facts established a prima facie case against the respondent, and that the case must go back to the magistrates to say whether or not in their opinion the offence charged had in fact been committed. *HAGDON v. EVANS* - Div. Ct. [1917] W. N. 268; 61 S. J. 710

False Pretences.**Document—Interpretation.**

When a false pretence is alleged in a document, the interpretation thereof is not a matter of law for the Court but of fact for the jury.

When the pretence alleged is (in effect) that a genuine business is carried on, the jury may infer without any specific statements by witnesses that they parted with their money on the faith of such an inducement. *REX v. ROSENSON (GOODMAN)* - C. C. A. 2 Cr. App. C. 235

See above, Appeal to C. C. A., col. 125.

Habitual Criminal.

Previous conviction as habitual criminal—Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10, sub-s. 2 (b).

Where a person who has been found to be a habitual criminal and has been sentenced to preventive detention subsequently commits another crime, he may, by virtue of s. 10, sub-s. 2 (b), of the Prevention of Crime Act, 1908, be again convicted as a habitual criminal, on proof being given of the previous conviction as a habitual criminal, without proving also that since the date of that conviction he has been leading persistently a dishonest or criminal life. *REX v. DAVIS (WILLIAM)* - C. C. A. [1917] 2 K. B. 855; 13 Cr. App. C. 10; [1917] W. N. 290; 34 T. L. R. 25; 61 S. J. 55

Warrants, Issue of—Notice.

If on the allegation of being a habitual criminal it is proposed to give evidence of warrants issued against deft. for offences of which he was suspected, notice must be given. *REX v. RUSSELL (CHARLES)* - C. C. A. 12 Cr. App. C. 271

CRIMINAL LAW (Evidence)—*continued.**Identity.*

Charge of gross indecency—Evidence of possession of powder puffs and indecent photographs of boys—Admissibility.

On the trial of a man on a charge of gross indecency the prosecution tendered evidence to prove that at the time the accused was carrying powder puffs and that in his rooms he had indecent photographs of nude boys. The defence was that the accused was not the man who committed the alleged offence, and he adduced evidence to prove an alibi:—

Held, that the evidence was admissible on the issue as to identity.

When objection is taken to the admissibility of evidence and the discussion of the objection in the presence of the jury may, in the opinion of the judge, be prejudicial to the prisoner, the proper course is to send the jury to their room and then to hear arguments in Court. *REX v. THOMPSON* - C. C. A. [1917] 2 K. B. 630; 86 L. J. (K. B.) 1321; 12 Cr. App. C. 261, 278; 117 L. T. 575; [1917] W. N. 234; 33 T. L. R. 506; 81 J. P. 266; 61 S. J. 647

Indecent Assault.

Complaint made by prosecutrix—Admissibility in evidence—Prosecutrix persuaded to tell unassisted story.

At the trial of the prisoner upon an indictment charging him with having indecently assaulted a female, a girl seventeen years of age, evidence was admitted of a statement in the nature of a complaint against the prisoner's conduct to her, made by the girl to a woman old enough to be her mother, and with whom she was on intimate terms, in answer to questions put by the woman, not of a suggestive or leading character, but which might have had the effect of persuading the girl to tell her unassisted and unvarnished story:—

Held, that the evidence was rightly admitted.

Judgment of the Court (delivered by Ridley J.) in *Rex v. Osborne* [1905] 1 K. B. 551 commented on and explained. *REX v. NORCOTT* C. C. A. [1917] 1 K. B. 347; 86 L. J. (K. B.) 78; 12 Cr. App. C. 166; 116 L. T. 576; 81 J. P. 123

Larceny.

On a charge of larceny from the person evidence of suspicious conduct by the accused just before and in the same circumstances as the offence charged is admissible. *REX v. EVANS (THOMAS)* - C. C. A. 12 Cr. App. C. 257

Murder.

Confession—Corpus delicti—Dead body not found—Onus of proof.

On a trial for the murder of the infant illegitimate daughter of the accused, evidence was given that he had directly confessed to the actual commission of the crime, but the dead body of the infant had not been found. The jury found the prisoner guilty:—

Held, that the judge (Gibson J.) had rightly refused to withdraw the case from the jury, that there was evidence upon which the prisoner could rightly be convicted, and that the conviction should be affirmed.

CRIMINAL LAW (Evidence)—*continued.*

In a charge of murder, by proof of the corpus delicti is meant proof of the factum of murder, and that the accused committed the murder or took part in its commission. Such proof may be established by the confession of the accused without proof of the finding of the dead body.

The dictum of Sir Matthew Hale (Pleas of the Crown, 1778 ed., vol. 2, p. 290), that he "would never convict any person of murder or manslaughter unless the fact were proved to be done, or at least the body found dead," is not an inflexible legal maxim, but is a wise and necessary caution to be addressed by the presiding judge to the jury.

Dictum of Pallett C.B. in *Queen v. Sullivan*, 20 L. R. Ir. 570, that the case of murder is an exception to the general rule of the common law, and that the confession of the accused is insufficient of itself to prove that the fact was done, unless there is proof of the finding of the dead body, dissented from. *REX v. McNICHOLL (PATRICK)* - C. C. R. (Ir.) [1917] 2 I. R. 557

Perjury.

Statement on oath by person charged after pleading guilty and before judgment—Evidence in mitigation of punishment—Materiality—Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), ss. 1, 2—Perjury Act, 1911 (1 & 2 Geo. 5, c. 6), s. 1.

The appellant having pleaded guilty at petty sessions to a charge under the Sale of Food and Drugs Act, 1875, was then sworn as a witness and wilfully made a false statement in order to influence the Court as to the punishment to be inflicted. He was subsequently convicted on an indictment for perjury in respect of that statement:—

Held, that the appellant was "a competent witness for the defence," under s. 1 of the Criminal Evidence Act, 1898, after he had pleaded guilty, and was "lawfully sworn as a witness" in the judicial proceeding, within s. 1 of the Perjury Act, 1911; and that the false statement which he made was material in that proceeding. *REX v. WHEELER* - C. C. A. [1917] 1 K. B. 283; 86 L. J. (K. B.) 40; 12 Cr. App. C. 159; 116 L. T. 161; [1916] W. N. 347; 33 T. L. R. 21; 81 J. P. 75; 61 S. J. 100

*Receiving Stolen Goods.**Burden of proof.*

On a charge of receiving stolen property the onus never shifts to the deft. *REX v. GRINBERG (NATHANIEL)* - C. C. A. 12 Cr. App. C. 259; 33 T. L. R. 428

Evidence that property was stolen.

On a charge of receiving stolen property the jury must be satisfied that the property was stolen, but the facts may be such that the judge summing up may assume that it was stolen.

Such an irregularity as the interposition of a person in Court interrupting a witness and making an unsworn statement about the case in hearing must be objected to by counsel at once. *REX v. AUSTIN (THOMAS) AND DAVIES (JOHN)*

C. C. A. 12 Cr. App. C. 171

See above, Appeal to C. C. A., col. 125.

CRIMINAL LAW—continued.

False Declaration.

See above, Evidence, col. 129.

False Pretences.

See above, Appeal to C. C. A., col. 125, and Evidence, col. 130.

High Treason.

Adhering to the King's enemies—Adherence without the realm—Aid and comfort—Treason Act, 1351 (25 Edw. 3, stat. 5, c. 2).

By the Treason Act, 1351, it is declared that if a man do levy war against our Lord the King in his realm, or be adherent to the enemies of our Lord the King in the realm, giving to them aid or comfort in his realm or elsewhere, and thereof be probably attainted of open deed, that ought to be adjudged treason:—

Held by the C. C. A., affirming the K. B. D., that if a British subject be adherent to the King's enemies in his realm by giving to them aid or comfort in his realm, or if he be adherent to the King's enemies elsewhere by giving them aid or comfort elsewhere, he is equally adherent to the King's enemies, and if he is adherent to the King's enemies he commits treason as defined by the Act.

Held by the K. B. D., that if a British subject does an act which strengthens or tends to strengthen the enemies of the King in the conduct of a war against the King, or which weakens or tends to weaken the power of the King and of the country to resist or attack the enemies of the King and country, he gives aid and comfort to the King's enemies within the meaning of the Act.

Therefore, the United Kingdom being at war with the Empire of Germany, where a British subject went to Germany and there endeavoured to persuade other British subjects, who were prisoners of war in Germany, to join the armed forces of the enemy, and took part in an attempt to land arms and ammunition in Ireland for the use of the enemy:—

Held by the K. B. D. and by the C. C. A., that he was guilty of high treason.

Held, also, that he could be tried in this country. *REX v. CASEMENT* - - K. B. D. and C. C. A. [1917] 1 K. B. 98; 86 L. J. (K. B.) 467; 12 Cr. App. C. 99; 115 L. T. 267, 277; 25 Cox, C. C. 480, 503; 32 T. L. R. 601, 667; 60 S. J. 656

Indecent Assault.

See above, Evidence, col. 131.

Judicial Committee (Privy Council).

— Practice—Police diaries.

See JUDICIAL COMMITTEE, col. 233.

Larceny.

See above, Evidence, col. 131.

Malicious Injury.

Malicious killing of a cat—“Animal ordinarily kept for any domestic purpose”—Whether necessary to prove that the particular cat killed was so kept—Malicious Injuries to Property Act, 1861 (24 & 25 Vict. c. 97), s. 41.

NYE v. NIBLETT - Div. Ct. [1917] W. N. 314

CRIMINAL LAW—continued.

Murder.

See above, Evidence, col. 131.

Perjury.

See above, Evidence, col. 132.

Receiving Stolen Goods.

See above, Appeal to C. C. A.—*Misdirection*, col. 125, and Evidence, col. 132.

Summary Jurisdiction.

See JUSTICES, col. 235.

Treason.

See above, High Treason, col. 133.

Vagrancy.

See JUSTICES, col. 239.

CROSS-CLAIMS—Company—Winding up.

See COMPANY—WINDING UP, col. 99.

CROSS-EXAMINATION—Corroboration.

See CRIMINAL LAW, col. 125.

“CROSSING RULE”—Collision.

See SHIPPING, col. 412.

CUSTOM—Contract.

See SALE OF GOODS, col. 369.

— Inconsistency with lease.

See LANDLORD AND TENANT, col. 248.

— Insurance.

See LANDLORD AND TENANT, col. 245.

— Merchants—Presumption—Rebuttal.

See PRINCIPAL AND AGENT, col. 313.

CUSTOMER—Bank—Negligence.

See BANK, col. 55.

DAMAGE—Cargo.

See SHIPPING, col. 393.

— Enemy aircraft.

See INSURANCE (FIRE), col. 202;
LANDLORD AND TENANT, col. 245.

— Indemnity—Lien.

See PRINCIPAL AND AGENT, col. 314.

DAMAGES—Charterparty—Breach.

See SHIPPING, col. 392.

Divorce.

See DIVORCE, col. 142.

— Excessive — New trial — County court—Appeal.

See COUNTY COURT, col. 121.

Liquidated—Agreed sum payable on breach of agreement—Bankruptcy—Proof of debt—Costs.

A co. who were patentees of a mechanical apparatus for cash despatch in shops, sought to prove against the debtor for a sum of 30l., and to remove their installation from the debtor's shop, relying upon an agreement whereby in effect, in consideration of the use of the apparatus, and of the installation, repair, and final removal of the same by the co., the

DAMAGES—*continued.*

debtor agreed to keep the apparatus for seven years certain, and to pay therefor a sum of 35*l.* in annual instalments of 5*l.*, of which one instalment only had been paid prior to her arrangement:—

Held, that the sum payable upon breach of the agreement was liquidated damages and not a penalty, and that the proof should be allowed but without costs. *In re O'B.*

Pim J. [1917] 2 I. R. 354

— Loss of bargain—Contract for sale of real estate.

See VENDOR AND PURCHASER, col. 451.

— Maintenance of suit.

See MAINTENANCE (SUIT), col. 270.

— Measure of.

See LANDLORD AND TENANT, col. 244, and SHIPPING, col. 407.

— Principal and agent.

See PRINCIPAL AND AGENT, col. 312.

— Prize Court.

See PRIZE COURT, col. 317.

— Shipping—Collision—Loss of life.

See SHIPPING, col. 412.

— Time for measuring.

See SALE OF GOODS, col. 367.

DAMNUM FATALE—Extraordinary rainfall.

See WATER, col. 454.

DANGEROUS PREMISES—Excessive damages

—Appeal.

See COUNTY COURT, col. 121.

DATE—Tenancy agreement—Sale of produce.

See LANDLORD AND TENANT, col. 241.

DAYS OF GRACE—Outbreak of war—Enemy yacht.

See PRIZE COURT, col. 326.

DEADWEIGHT CAPACITY—Guarantee.

See SHIPPING, col. 402.

DEATH—Debenture-holder—Payment.

See COMPANY, col. 88.

— Director—Company—Prospectus—Liability of executors.

See COMPANY, col. 90.

— Negligence.

See CANADA, col. 70.

DEATH DUTIES.

See WILL, col. 465.

DEBENTURE-HOLDER—Death of—Executor.

See COMPANY, col. 88.

DEBENTURES.

See COMPANY, col. 87, and COSTS, col. 118.

DEBT—Alien enemy—Due from—Payment.

See ALIEN ENEMY, col. 13.

— Money-lender.

See BANKRUPTCY, col. 62.

— Proof—Bankruptcy.

See BANKRUPTCY, col. 62.

DEBTOR—Bankruptcy.

See BANKRUPTCY.

DEBTS—Charge of.

See POWER OF APPOINTMENT, col. 307

— Enemy firm—Controller—Power of, to sue in name of firm.

See EMERGENCY LEGISLATION, col. 155.

— Purchase of—Bankruptcy.

See BANKRUPTCY, col. 60.

DECK—Motor car carried on.

See INSURANCE (MARINE), col. 207.

DECLARATION—Future rights.

See REVENUE, col. 356.

— Restraint on anticipation—Release.

See MARRIED WOMAN, col. 271.

DECLARATION OF ALIENAGE.

See ALIEN, col. 11.

DECLARATION OF LONDON.

See PRIZE COURT, col. 319.

DEDUCTION—Excess profits tax—Manager—Remuneration.

See COMMISSION, col. 83.

— Income tax—Annual payment.

See REVENUE, col. 358.

— Landlord's property tax—Arrears of rent.

See LANDLORD AND TENANT, col. 244.

— Revenue—Income tax—Expenditure.

See REVENUE, col. 358.

DEED OF ARRANGEMENT.

See BANKRUPTCY, col. 59.

DEED OF SEPARATION.

See DIVORCE, col. 147.

DEED POLL—Restraint on anticipation—Partial release—Declaration.

See MARRIED WOMAN, col. 271.

"DEEMED TO HAVE BEEN SERVED AND RECEIVED."

See RATES, col. 345.

DEFAMATION—Libel—Injunction till trial—Refusal of motion.

The Home Secretary made an order sanctioning an increase of taxi-cab fares in London and the drivers' trade union instructed the defts., who were printers, to print a circular stating that the proprietors, with their usual greed and rapacity, were claiming the whole of the increase. The defts. printed the circular, and delivered 4000 copies to the trade union. Thereupon the plts., who were (1.) an unincorporated body of taxi-cab owners, suing by their chairman, and (2.) a limited co. also owning taxi-cabs, brought an action against the defts. for libel, and moved for an injunction to restrain them until the trial from publishing the circular. At the hearing of the motion the evidence was that no further order had been given to the defts., and they did not intend to print any more copies:—

Held, that as the injunction would, in the circumstances, do no good, and as there was a

DEFAMATION—continued.

question whether the issue of the circular was not privileged, and as it was doubtful whether the action was properly framed, the motion must be refused. *LONDON MOTOR-CAB PROPRIETORS ASSOCIATION AND BRITISH MOTOR-CAB CO. v. TWENTIETH CENTURY PRESS* (1912), *LD.*

Younger J. 34 T. L. R. 68

Libel — Pleading — Plea of privilege—No reply alleging express malice.

In a libel action where the statement of claim alleges that the publication was malicious and privilege is pleaded in the defence it is not necessary for the plt. to deliver a reply alleging express malice. *SMITH v. LEWIS*

Shearman J. 33 T. L. R. 195

Libel—Privileged occasion—Excess of privilege.

Upon a plea that a libel was published on a privileged occasion it is for the judge to determine whether the occasion is privileged and whether the privilege has been exceeded.

Where a libel contains defamatory matter not referable to the duty or interest which gives rise to the privileged occasion such matter is outside the occasion and is not protected; and such excess of privilege in part of a defamatory publication may also be evidence of malice as to the whole of it. Excessive language in regard to a matter within the privileged occasion is material only as evidence of malice, and, *semble*, in determining whether such language is evidence of malice, it will not be subjected to strict scrutiny.

A public official who, acting under the direction of his principals, signs and publishes a libel takes the benefit of the privilege of his principals and is liable for their malice; and, *semble*, evidence of malice on his part is irrelevant.

The plt., who was formerly an officer in a cavalry regiment and was subsequently elected a member of Parliament, made a false charge in the House of Commons against the General commanding the brigade of which his late regiment formed part of sending confidential reports to headquarters on officers under his command, containing wilful and deliberate misstatements. The General having referred the matter to the Army Council, the defendant, as secretary to the Council and by their direction, wrote a letter to the General, vindicating him against the charge made by the plt. and containing defamatory statements about the plt., and sent it to the Press for publication. The letter was published broadcast in the British and Colonial Press. In an action for libel by the plt. against the deft., the deft. pleaded that the letter was published on a privileged occasion:—

Held: (1.) That the occasion was privileged and that there was no evidence of malice on the part of either the Council or the deft.; (2.) that, having regard to the circumstances under which the plt.'s charge was made, the publication of the libel was not wider than the occasion required; (3.) (Earl Loreburn doubting but not dissenting) that in the special circumstances of the case the defamatory statements were strictly relevant to the vindication of the

DEFAMATION—continued.

General, and that the whole of the letter was protected.

Decision of the C. A. (1915) 31 T. L. R. 299 affirmed. *ADAM v. WARD* - - *H. L. (E.)* [1917] A. C. 309; 86 L. J. (K. B.) 849; 117 L. T. 34; 33 T. L. R. 277

Libel—Privileged occasion—Express malice—Evidence.

In an action for libel in respect of words published on a privileged occasion the jury had awarded the plts. damages, but the C. A. directed judgment to be entered for the defts. on the ground (Lord Reading C.J. dissenting) that there was no evidence of express malice. *BARBER (J. LIONEL) & CO. v. DEUTSCHE BANK (BERLIN) LONDON AGENCY* - *C. A.* 33 T. L. R. 543

Libel—Publication to typist—Solicitor's bill of costs—Privilege.

The plts., G. E. Morgan and A. Wilmshurst, respectively managing director and auditor of a limited co., brought a libel action against E. L. Wallis, a solicitor, because of words in bills of costs which were sent to E. Morgan (the father of G. E. Morgan), who held preference shares in the co., and to a solicitor, who represented a daughter of E. Morgan, Mrs. Hall, who was also a shareholder in the co. The material words in the bill of costs which was sent to E. Morgan were:—"Long attendance on Mr. E. Morgan . . . he insisted that Mr. G. E. Morgan was applying the company's money for his own ends, and it was believed that at the bottom of the difficulties was Mr. Wilmshurst, who was the auditor of the company, and whom he distrusted." Similar words were used in the bill of costs which was sent to Mrs. Hall's solicitor. The plts. alleged that the words were published to a typist who typed the bills of costs, to E. Morgan, who was blind and had to have the bill read to him, and also to Mrs. Hall's solicitor. Upon the pleas of privilege and of no publication:—

Held, that the mere dictation of a bill of costs to a typist, as a matter of office routine, was not publication, and that while there was no absolute privilege in a bill of costs there was privilege when a solicitor inserted in it, without malice, information which, though defamatory, was relevant in the widest sense and was reasonably necessary to enable his client to understand what he was being asked to pay for. *MORGAN AND ANOTHER v. WALLIS* - - *Darling J.* 33 T. L. R. 495

DEFAULTING MEMBER—Stock Exchange.

See BANKRUPTCY, col. 59.

DEFENCE — Breach of warranty — Set-off — County court.

See COUNTY COURT, col. 120.

— Judicial Trustees Act, 1896—Not necessary to plead.

See MORTGAGE, col. 282.

DEFENCE OF THE REALM.

See NEGLIGENCE, col. 289, and EMERGENCY LEGISLATION, col. 161

- DEFINITION**—Building line—London.
See LONDON, col. 265.
- DELIVERY**—Sample taken in course of.
See ADULTERATION, col. 5.
- Suspension of—Sale of goods.
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- Husband and wife—Property—Originating summons.
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- DISSOLUTION**—Partnership—Outbreak of war.
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See **TRADE MARK**, col. 438.

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Action against justice for illegal distress.
See **JUSTICES**, col. 238.

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DIVORCE.

Abatement. See below, **Damages**.

Condonation, col. 141.

Costs, col. 142.

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Mahomedan Divorce. See below,
Mixed Marriage.

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Abatement.

See below, **Damages**, col. 142.

Condonation.

*Husband's suit for dissolution of marriage—
Condonation of adultery pleaded by wife—
Obtained by fraudulent statement of wife—No
bar to obtaining a decree nisi.*

The wife had confessed to the husband that she had committed adultery with the co-respondent, and the husband agreed to forgive her on condition that she was not pregnant as a consequence of her said adultery. The wife falsely alleged that she was not pregnant and in consequence the husband slept with her and had intercourse with her:—

Held, that there was no real condonation of her offence, and that the husband was entitled to a decree nisi for the dissolution of his marriage.

ROBERTS v. ROBERTS AND TEMPLE

Hill J. 33 T. L. R. 333; 117 L. T. 157;
61 S. J. 492

DIVORCE—continued.

Costs.

*Costs against wife—Restraint on anticipation
—Evidence—Admissibility.*

On a husband's petition for divorce it appeared that the respondent had separate estate but she was restrained from anticipation under the marriage settlement, and the solicitor to the trustees was called to prove that some of the respondent's income passed through his hands to her, but he had not received the trustees' consent that he should give evidence:—

Held, that the witness could not give evidence on the matter without the leave of the trustees, and that as there was no evidence that the respondent possessed any property free from restraint on anticipation the respondent could not be condemned in costs. **HUMPHERY v. HUMPHERY AND WAKE** - - Horridge J.
33 T. L. R. 433

See below, **Damages**.

Damages.

Claim for divorce and for damages against co-respondent A.—Co-respondent B. added by supplemental petition—Decree nisi pronounced and made absolute on proof of adultery with co-respondent—Abatement of claim for damages—Wife's claim for costs applied for after decree absolute—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 33.

Condonation by the husband would be an answer to a claim for damages against a co-respondent even if brought by a separate petition under s. 33 of the Matrimonial Causes Act, 1857; but a petition for damages does not in all cases stand or fall with a petition for dissolution of marriage.

Therefore, where a petition for dissolution was filed against one co-respondent and afterwards a second co-respondent was added and a decree nisi was obtained and made absolute on evidence of adultery with the second co-respondent without any trial of the case against the first:—

Held, that the petitioner's cause of action against the co-respondent A. for damages was not abated, and A. was not entitled to have the petition against him dismissed with costs.

Held, also, that an application by the wife for her costs of the original petition was premature until the petition had been heard on the question of damages. **STOCKER v. STOCKER, BRICE, AND PATTERSON** - - Horridge J.
[1917] P. 264; 86 L. J. (P.) 156; 117 L. T. 543; [1917] W. N. 270;
33 T. L. R. 533

Desertion.

Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39)—Good cause for separation.

The innocent contraction of a venereal disease by a wife before marriage, though communicated to her husband, does not afford the husband sufficient ground for leaving his wife, and, therefore, is no defence to her complaint to a Court of summary jurisdiction for main-

DIVORCE (Desertion)—continued.

tenance on the ground of desertion. *BUTLER v. BUTLER* - Div. Ct. [1917] P. 244; 86 L. J. (P.) 135; 117 L. T. 542; 33 T. L. R. 494; 61 S. J. 631

Discretion.

Adultery—Desertion—Failure to comply with decree for restitution of conjugal rights—Failure to enforce such a decree—Desertion not conducing to adultery—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 31—Matrimonial Causes Act, 1884 (47 & 48 Vict. c. 68), s. 5.

The statutory desertion arising under the Matrimonial Causes Act, 1884, by reason of the failure of a spouse to comply with a decree for restitution of conjugal rights is only a discretionary bar to his or her claim for relief on the ground of subsequent adultery of the other spouse.

Where the Court is satisfied that the statutory desertion has not conduced to the adultery and that the deserted spouse took no active steps to enforce the decree for restitution, the Court may exercise its discretion by granting relief in respect of the subsequent adultery, in spite of the statutory desertion of which the complaining spouse has been guilty. *STONE v. STONE AND OSBORNE* - Hill J. [1917] P. 125; 86 L. J. (P.) 101; 117 L. T. 156; [1917] W. N. 158; 33 T. L. R. 319; 61 S. J. 461

Adultery of petitioner (husband) undisclosed—Ignorance of law and practice—Poor person—King's Proctor's intervention.

In exercising the discretion conferred upon the Court by s. 31 of the Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), each case must be considered in the light of its own circumstances and surroundings.

Where a petitioner who had lived apart from his wife did not know and was not told that his own adultery, committed long after his wife left him, was a material fact which he ought to disclose at or before the hearing of his petition, the Court refused to rescind the decree nisi, but ordered the petitioner to pay the costs of the King's Proctor. *HOOK v. HOOK AND BROWN (THE KING'S PROCTOR SHOWING CAUSE)* - Low J. [1917] P. 56; 86 L. J. (P.) 41; 116 L. T. 383; 33 T. L. R. 181; 61 S. J. 284

Domicil.

Residence in foreign State—Member of extra-territorial community.

Residence in a foreign State as a privileged member of an extra-territorial community is ineffectual to create a new domicile of choice. *CASDAGLI v. CASDAGLI* - Horridge J. 34 T. L. R. 96

Evidence.**Affidavit.**

Jurisdiction—Practice—Proof of adultery committed abroad—Commission—Discretion of Court—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), ss. 46, 53—Divorce Rules, rr. 51, 188.

Leave to prove adultery by affidavit in undefended cases where the witnesses are abroad or for other reasons cannot give evidence

DIVORCE (Evidence)—continued.

in open Court should be rarely given and only as an exceptional indulgence in special circumstances. Recent laxer practice disapproved.

Per Lord Cozens-Hardy M.R. and Warrington L.J.: Where the witnesses are resident abroad or for other reasons cannot attend the Court a commission to take their evidence is preferable to allowing it to be given on affidavit.

Per Scrutton L.J.: There is no such general advantage in commission evidence over affidavits as to lead to a general rule that adultery shall never, or only in special cases, be proved by affidavits in undefended cases.

The petitioner in an undefended suit for divorce asked for leave to prove the adultery of her husband in New York by the affidavits of two witnesses residing there, on the ground that she was of limited means, and that it would be a great saving of expense and trouble if leave were granted. Shearman J., without exercising his discretion, refused her application on the ground that he disapproved the practice of allowing adultery to be proved by affidavit:—

Held, on appeal, by Lord Cozens-Hardy M.R. and Warrington L.J. (Scrutton L.J. dissenting), that, having regard to the earlier practice which was founded on good sense and ought not lightly to be departed from, Shearman J. was justified in refusing to make the order. *GAYER v. GAYER* - C. A. [1917] P. 64; 86 L. J. (P.) 73; 116 L. T. 322; [1917] W. N. 46; 33 T. L. R. 182; 61 S. J. 251

Confession.

Trial of issue between petitioner and co-respondent—Statement to petitioner of alleged confession by respondent to a witness—Issue as to alleged collusion between petitioner and respondent—Relevancy—Practice.

Upon the trial of issues as to a co-respondent's alleged adultery and as to a counter-charge of collusion put forward in the co-respondent's answer, the evidence of a witness, called by the petitioner to prove statements made to him by the witness detailing a confession alleged to have been made by the respondent, who had not appeared to the citation, was admitted as being relevant to the counter-charge of collusion to present a false case to the Court and to obtain a decree contrary to the justice of the case. *FARULLI v. FARULLI AND PEDERZOLI*

Shearman J. [1917] P. 28; 86 L. J. (P.) 35; 116 L. T. 18; 61 S. J. 116

Wife's confession sole evidence of adultery—Petition by husband—Object of confessions considered—Practice.

A. S. C. petitioned for dissolution of marriage, alleging that his wife D. C. had committed adultery with C. S. D. The only evidence in support of the allegation were confessions made by the wife to the petitioner and his sister.

Shearman J. granted a decree nisi, being satisfied that the confessions were true and had not been made for the purpose of bringing about a dissolution of the marriage tie, but solely in order to obtain the husband's forgiveness. *COLLINS v. COLLINS AND DEAL* - Shearman J. 115 L. T. 936; 33 T. L. R. 123; 61 S. J. 184

DIVORCE (Evidence)—continued.*Marriage.**Channel Islands.**Jersey—Celebration in.*

A certificate of a marriage having been celebrated in Jersey according to the forms of the Church of England was admitted as sufficient evidence of the fact of the marriage without calling expert evidence. *BOUGHEY v. BOUGHEY AND FOAN* - Low J. 86 L. J. (P.) 89; 117 L. T. 156; [1917] W. N. 140

*Gold Coast.**Ordinances of the Colony—Expert evidence necessary—Practice.*

Where in a suit for the restitution of conjugal rights it appeared that the parties had been married in the Gold Coast Colony:—

Held, that the production of the ordinance of the Colony relating to marriages was insufficient to prove the validity of a marriage there, and that it was necessary to have the evidence of an expert witness as to the law in force in the Colony.

Roe v. Roe, 115 L. T. 792, not followed. *BROWN v. BROWN* - Hill J. 116 L. T. 702; 61 S. J. 554

*Scotland.**Scottish marriage—Proof—Registration of Births, Deaths, and Marriages (Scotland) Act, 1854 (17 & 18 Vict. c. 80), s. 58.*

A certificate under s. 58 of the Registration of Births, Deaths, and Marriages (Scotland) Act, 1854, is sufficient proof of a regular Scottish marriage without the addition of expert evidence. *DANIELS v. DANIELS* Shearman J. 33 T. L. R. 149

*Onus of Proof.**Adultery—Venereal disease.*

Where there are cross-charges of adultery and of the communication of venereal disease, proof that the petitioning husband had contracted a venereal disease is not sufficient to throw upon him the onus of proving that it was communicated to him by his wife, but the onus is still on the wife to prove her husband's adultery. *GLIKSTEN v. GLIKSTEN AND DEANE* - Hill J. 33 T. L. R. 203; 116 L. T. 543

King's Proctor—Plea—Answer—Substantial admissions of adultery—Practice.

Where the answer of a petitioner to the plea of the King's Proctor showing cause why a decree nisi should not be made absolute contains substantial admissions of adultery, but puts forward grounds for asking the Court to exercise its discretion in favour of the petitioner, the right course is that the petitioner begin. *OSTICK v. OSTICK (THE KING'S PROCTOR SHOWING CAUSE)* Shearman J. [1917] P. 20; 86 L. J. (P.) 6; 115 L. T. 789; 33 T. L. R. 28; 61 S. J. 100

Intervention.

— Child.

See below, Nullity, col. 146.

— King's Proctor.

See above, Desertion, col. 142, and Evidence, col. 145.

DIVORCE—continued.*Justices, Appeal from.*

Summary jurisdiction—Wilful neglect causing wife to leave and live separate and apart—Separation before wilful neglect to provide reasonable maintenance—Actual physical leaving caused by neglect to maintain—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), s. 4.

There must be an actual physical departure from the particular place which constituted the matrimonial home, and such departure must be caused by neglect to provide reasonable maintenance, in order to found jurisdiction to make an order under the words "wilful neglect to provide reasonable maintenance . . . and shall by such . . . neglect have caused her to leave and live separately and apart from him," in s. 4 of the Summary Jurisdiction (Married Women) Act, 1895. *NICHOLSON v. NICHOLSON*

Div. Ct. [1917] P. 21; 86 L. J. (P.) 11; 115 L. T. 791; 33 T. L. R. 89; 61 J. P. 31; 61 S. J. 337

King's Proctor.

See above, Discretion, col. 143, and Evidence, col. 145.

Mahomedan Divorce.

See below, Mixed Marriage, col. 146.

*Maintenance.**Amount.*

Consideration of the amount of permanent maintenance which a divorced husband should be ordered to pay to his former wife. *HULTON (A. M.) v. HULTON (E.)* - Shearman J. 33 T. L. R. 137

Mixed Marriage.

Mahomedan domiciled in India and Christian woman—Dissolution of marriage—"Writing of divorcement."

A marriage solemnized in this country between a Mahomedan domiciled in India and a Christian woman cannot be dissolved by the husband handing to the wife a "writing of divorcement," although that would be an appropriate mode of effecting the dissolution of a Mahomedan marriage according to Mahomedan law. *REX v. HAMMERSMITH SUPERINTENDENT REGISTRAR. Ex parte MIR-ANWAR-UDDIN* - C. A. [1917] 1 K. B. 634; 86 L. J. (K. B.) 210; 15 L. G. R. 83; 115 L. T. 882; [1916] W. N. 395; 33 T. L. R. 78; 61 J. P. 49; 61 S. J. 130

Nullity.

Marriage—Validity—Marriage by licence before registrar—"Due notice"—False statements in notice—Petition for nullity—Omission to state birth of issue—Decree nisi—Intervention of child—Appeal—Marriage Act, 1836 (6 & 7 Will. 4, c. 85), ss. 4, 42—Marriage and Registration Act, 1856 (19 & 20 Vict. c. 119), ss. 2, 3, 17, 18, 19—Matrimonial Causes Act, 1907 (7 Edw. 7, c. 12), s. 3—Perjury Act, 1911 (1 & 2 Geo. 5, c. 6), ss. 3, 17.

In the case of a marriage by licence before a

DIVORCE (Nullity)—*continued.*

superintendent registrar under the provisions of the Marriage Act, 1836, and the Marriage and Registration Act, 1856, although the notice or declaration required by the Acts may contain false statements to the knowledge of both parties the marriage will nevertheless be valid.

There is no analogy between the case of a marriage by banns or on notice before a registrar and that of a marriage by licence. In the former the main object is publicity; in the latter identity.

Dictum of Lord Penzance in *Holmes v. Simmons* (1868) L. R. 1 P. & M. 523, 529, considered.

In re Rutter [1907] 2 Ch. 592 approved.

In order to keep her marriage secret from her father, whose consent was necessary, a minor was married by licence before the registrar in a false name, the previous statutory notice under the Marriage Act, 1836, s. 4, being false to the knowledge of both parties in this and other respects. A petition was subsequently presented by the husband for nullity of marriage based on the above facts. The petition was not defended by the wife, and a decree nisi was granted by Bagnave Deane J. There was one child of the marriage, an infant, but her birth was not stated in the petition. The child subsequently obtained leave to intervene in the suit under s. 3 of the Matrimonial Causes Act, 1907, and to appeal against the decree nisi. On appeal:—

Held, that the marriage being by licence was not invalidated by reason of the false statements in the notice, and that the appeal must therefore be allowed, the decree rescinded, and the petition dismissed.

Decision of Bagnave Deane J. reversed. *PLUMMER v. PLUMMER. DOROTHY FRANCES PLUMMER, INTERVENER* - C. A. [1917] P. 163; 86 L. J. (P.) 145; 117 L. T. 321; [1917] W. N. 199; 33 T. L. R. 417; 61 S. J. 558

Refusal to consummate—Petition—Dismissal.

In the circumstances of this case the Court dismissed a petition for a nullity decree. *FINEGAN v. FINEGAN, OTHERWISE MCHARDY* Low J. 33 T. L. R. 173

Restitution of Conjugal Rights.

Agreement before marriage to live separate—Indorsed agreement of confirmation signed immediately after, but prepared before, marriage—Invalidity—Public policy.

Wife's petition for restitution of conjugal rights. The husband pleaded agreement that the parties might live apart. The agreement produced was signed before the marriage ceremony, and provided that the parties might at all times after the marriage live separate and apart. This purported to be confirmed by an indorsed agreement signed by both parties immediately after the ceremony. The confirming agreement was indorsed upon the first agreement before the marriage, and the parties had at the same time agreed to execute it after the marriage:—

Held, that the two documents formed only one agreement, and, their object being against

DIVORCE (Restitution of Conjugal Rights)—*continued.*

public policy, the agreement was void and afforded no defence to the wife's petition. The first document being void could not be confirmed by the second. *BRODIE v. BRODIE* [1917] P. 271; 86 L. J. (P.) 140; 117

L. T. 542; [1917] W. N. 258; 33 T. L. R. 525; 62 S. J. 71

Deed of separation—Mutual covenant not to sue for restitution—No appearance or plea by husband—Order made notwithstanding the covenant.

Where a mutual covenant in a deed of separation gives rise to no question of public policy or of statutory bar to matrimonial proceedings, but is such that either party may take advantage of it, or both may set it aside, as for instance a mutual covenant not to sue for restitution of conjugal rights, the Court is not bound to take notice of the covenant in a suit seeking a remedy which may be contrary to the covenant, if the respondent in the suit does not appear or set up the covenant.

The Court granted a wife a decree for restitution of conjugal rights, in spite of the existence of a deed of separation disclosed to the Court containing a covenant not to sue for restitution of conjugal rights, which the respondent did not appear to set up.

Tress v. Tress (1887) 12 P. D. 128 followed.

Kennedy v. Kennedy [1907] P. 49 not followed. *PHILLIPS v. PHILLIPS* - Low J. [1917] P. 90; 86 L. J. (P.) 57; 116 L. T. 544; [1917] W. N. 94; 33 T. L. R. 226; 61 S. J. 370

Jurisdiction—How far cohabitation enforceable.

WILY v. WILY - Hill J. [1917] W. N. 328; 34 T. L. R. 33; 62 S. J. 55

Separation Deed.

See above, Restitution of Conjugal Rights, col. 147, and POWER OF APPOINTMENT, col. 303.

DOCKS — Contract — Construction — Dock "traffic."

By an agreement, made between a corporation owning a dock and dock rys. and two ry. cos. whose rys. were in connection with the dock rys., the ry. cos. were only to pay charges to the corporation for "traffic in any year" going over the dock rys. which was in excess of a certain "average annual tonnage of traffic":—

Held, that the excess traffic must be ascertained by construing the word "traffic" to mean "all traffic" taken from or delivered by the corporation to the cos., including traffic going to or arising from the premises of lessees of the corporation within the docks, and from the corporation itself, but not including certain special constructional traffic for a new dock.

Decision of Sargant J. (14 L. G. R. 756) reversed. *BRISTOL CORPORATION v. GREAT WESTERN RY. CO. AND MIDLAND RY. CO. - C. A.* 86 L. J. (Ch.) 358; 15 L. G. R. 17; 81 J. P. 33

DOCTRINE OF CONTINUOUS VOYAGES.

See PRIZE COURT, col. 320.

DOCTRINE OF INFECTION—Prize Court.

See PRIZE COURT, col. 327.

DOCUMENTS—Lien—Solicitor.

See SOLICITOR, col. 423.

DOG LICENCE—*Keeping dog without licence—Second conviction for keeping same dog in same year—Dog Licences Act, 1867 (30 & 31 Vict. c. 5), s. 8.*

FLACK v. CHURCH - Div. Ct. [1917] W. N. 314; 15 L. G. R. 951

DOMESTIC PURPOSES—Water used for.

See WATER, col. 454.

DOMICIL—Commercial.

See PRIZE COURT, col. 324.

— Divorce.

See DIVORCE, col. 143.

— Italian—Donee of power with.

See POWER OF APPOINTMENT, col. 308.

DONATIO MORTIS CAUSA — Administration—Will—Costs of unsuccessful action to obtain probate—Deficiency of assets—“Testamentary expenses.”

Two persons, who were named as executors in what purported to be the will of the deceased, on the advice of senior counsel, instituted an action to obtain a grant of probate of the alleged will. The jury found against the alleged will, which was condemned, but the executors were declared entitled to their costs out of the assets.

Subsequently to the trial of the probate action a suit was brought for the administration of the estate of the deceased, which mainly consisted of a sum of 923*l.* standing on deposit receipt. These moneys were adjudged by Barton J. and by the C. A. to have been the subject-matter of a good donatio mortis causa to R. Nearly all the costs incurred by the executors in the probate action had been incurred before R. put forward his claim to the ownership of the deposit receipt. There was a deficiency of assets:—

Held, that the moneys on deposit receipt were not assets, and were not liable for the payment of any of the costs of the probate action. KELLY v. O'CONNOR - Barton J.

[1917] 1 I. R. 312

DONEE—Power of appointment—Release of power by implication.

See POWER OF APPOINTMENT, col. 309.

DUTY — Merger — Intention — Interest — Subsequent dealings — Evidence.

See MERGER, col. 276.

— Revenue.

See REVENUE, col. 353, and WILL, col. 465.

EARNINGS—Assignment of present and future

—Illegality—Public policy.

See CONTRACT, col. 107.

EASEMENT—Notice to treat.

See COMPENSATION, col. 101.

— Right of way—Contract—“Et cetera”—Form of conveyance.

See VENDOR AND PURCHASER, col. 419.

— Support to building by building.

See LONDON, col. 266.

Water—Right to draw water from an enclosed well—Dominant and servient tenement held under same landlord—Reservation of “all waters and watercourses in or adjoining the demised premises”—Lost grant—User—Trespass.

A. and B. were tenants of the same landlord. A. held under a yearly tenancy, created on the determination in 1889 of a lease of 1851, which excepted to the lessor “all waters and watercourses in or adjoining the demised premises,” with liberty to the lessor to turn and dispose of such waters and watercourses. B. had held 61 acres as tenant from year to year. In 1884 he was ejected on notice to quit, 21 acres of his holding being demesne lands. After being out of possession for about eighteen months, B. obtained a tenancy from year to year in 40 acres of the original holding at a rent of 30*l.*, subsequently fixed, by fair rent order, at 21*l.*; and he later obtained a grazing letting of the remaining 21 acres at a rent of 21*l.*, subsequently reduced to 10*l.* There was an enclosed well on A.'s land, out of which some four or five families admittedly regularly took water, B.'s family being amongst the number. To an action of trespass brought by A., B. in his defence relied on a claim of right, founded on lost grant or alternatively upon a demise, to take water from the well on A.'s land, and counterclaimed for interference by A. with the exercise of the right claimed. The action and counterclaim were tried by Gibson J. without a jury. The plt. relied on evidence:—

Held, by the learned judge at the trial, that the reservation contained in the lease of 1851 did not include the water in the well, and that therefore the deft. B. could not claim a right to the water by demise from the common landlord; that owing to the break in B.'s tenure, evidence of user prior to his new tenancy in 1886 was not admissible; that on the evidence the taking of the water by the deft. from the well in question was permissive and not of right; that B. had not proved facts from which a lost grant could be presumed, and that verdict and judgment should be given for A. in the original action, and against B. on the counterclaim.

On motion by the deft. to set aside the verdict and judgment, *held*, by the Div. Ct. (Cherry L.C.J. and Boyd J.), (1.) that, even assuming that the water in the well was included in the reservation in the lease of 1851, there was no evidence of a demise to B. of a right to take water from the well; and (2.) that, even if evidence of user prior to 1886 was admitted, the learned judge at the trial had evidence upon which to found his findings of fact that the user proved was permissive, and that, these findings not being against the weight of evidence, the verdict and judgment entered for the plt. and against the deft. in the action must stand.

EASEMENT—continued.

On appeal, *held* that, on the true construction of the lease of 1851, the well together with the waters therein were excepted to the landlord, that the user of the well by the deft. was lawful under the permission of the landlord, and that the action ought to be dismissed. *WHELAN v. LEONARD* - - C. A. (Ir.) [1917] 2 I. R. 323

ECCLESIASTICAL LAW—*Appeal from inhibition of incumbent and appointment of curate by bishop of diocese—Inadequate performance of ecclesiastical duties of benefice—Commission under Pluralities Acts and Benefices Act, 1898—Duty of judge of Court constituted under Benefices Act, 1898, as to findings of law and fact—Discretion of Archbishop as to orders to be made after findings of judge—Benefices Act, 1898 (61 & 62 Vict. c. 48), s. 9, sub-ss. 1, 6; s. 13, sub-ss. 1, 3—Practice—Right to begin—Disregard of formal objections—Benefices Rules, 1899, rr. 21, 43—Costs.*

In an appeal under the Benefices Act, 1898, against the inhibition by the bishop of the diocese of an incumbent of a parish in the diocese as to whom the majority of a Commission under the Pluralities Acts and the Benefices Act, 1898, has reported that the ecclesiastical duties of the benefice had been inadequately performed owing to the negligence of the incumbent and against the appointment by the bishop of a curate to perform the duties of the benefice, the appellant begins.

The incumbent of a parish church was inhibited by the bishop of the diocese in which the parish church was situate from performing until further notice any of the ecclesiastical duties of the benefice after the majority of the Commissioners appointed on a Commission issued under the Pluralities Acts and the Benefices Act, 1898, had reported that the ecclesiastical duties of the benefice had been inadequately performed, and that that was due to the negligence of the incumbent. The bishop further appointed a curate to perform the duties of the benefice. Against the inhibition and against the order of the bishop so appointing a curate the appellant appealed to this Court. The appeal was heard before the Archbishop of Canterbury, within whose province was the diocese of the bishop by whom the inhibition had been issued, and Lord Coleridge J., the judge appointed to be judge of the Court constituted under the Benefices Act, 1898; and after witnesses had been examined orally on behalf of the appellant and of the respondent, the bishop of the diocese, the judge, after observing that he was the sole judge of law and fact, and in discharging the function laid upon him had to find whether and in what respect the appellant had been negligent by causing the ecclesiastical duties of the benefice to be inadequately performed, whilst the Archbishop had to determine whether or not, having regard to the findings of the judge, the appellant should be inhibited, and whether a curate should or should not have been appointed, decided that the appellant had been negligent in the performance of the ecclesiastical duties of the benefice, comprising in those words the observance of the promises

ECCLESIASTICAL LAW—continued.

as to conduct which the appellant had solemnly made at his ordination in the following matters—i.e., that he had grossly abused the legitimate use of the pulpit by in his sermons denouncing persons by name and holding them up to the ridicule, contempt, and opprobrium of the congregation; had habitually used foul language in the parish; had been proved in several instances to have so conducted himself with intemperate language and violent and threatening gestures as calculated to undermine the whole influence which any person in holy orders should wield; and had been convicted of an assault. Thereupon the Archbishop in his discretion pronounced that the appointment of the curate had been rightly made and that the appellant should be inhibited from the performance until further notice of all the ecclesiastical duties of the benefice.

It is not necessary to render a report of the majority of the Commrs. on a Commission under the Pluralities Acts and the Benefices Act, 1898, valid that the draft report should have been submitted to those Commrs. in the minority who dissent from the conclusion come to by the majority of the Commrs. Any objection founded on the draft report not having been sent to all the Commrs. is a formal objection within r. 43 of the Benefice Rules, 1898, and is therefore bad.

Observations as to the proper course to be taken where a minority of the Commrs. on a Commission under the Pluralities Act, 1838, dissents from the majority of the Commrs. *RICE v. THE BISHOP OF OXFORD*

Coleridge J. and Archbishop of Canterbury
[1917] P. 181; 117 L. T. 383;
[1917] W. N. 207;
33 T. L. R. 421

EDUCATION—*Duty of local education authority—Poor Law guardians—Boarded-out Poor Law children—Attendance of children at public elementary school—"Maintenance" of school—Refusal of Poor Law guardians to make special payment towards expenses of education—Threat by local education authority to exclude children—Action for injunction—Jurisdiction—Board of Education—Elementary Education Act, 1870 (33 & 34 Vict. c. 75), ss. 3, 5, 7, 17, 18, 74, 97—Elementary Education Act, 1876 (39 & 40 Vict. c. 79), ss. 4, 23—Elementary Education Act, 1891 (54 & 55 Vict. c. 56), ss. 2, 4—Elementary Education Act, 1900 (63 & 64 Vict. c. 53), ss. 2, 6, sub-s. 1—Elementary Education Act, 1902 (2 Edw. 7, c. 42), ss. 5, 7; Sched. III.; Sched. IV., Part II.—Board of Education Code of Regulations, 1912 (the "Code"), arts. 26 (b), 53 (a)—Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 24, sub-s. 2 (a).*

Appeal from a decision of Neville J. (86 L. J. (Ch.) 478; [1917] W. N. 136).

Held, that the fact of the refusal by a board of guardians to contribute to the expenses of a public elementary school does not entitle the local education authority to refuse to admit to the school children maintained by the guardians, and that the provision of art. 26 (b) of the Code, with regard to the finality of the decision of the

EDUCATION—continued.

Board of Education as to the fulfilment of any of the conditions specified in the Code, although it entitles the Board of Education to determine whether the exclusion of a child is reasonable, for the purpose of deciding whether the conditions for obtaining the annual grant have been fulfilled, nevertheless does not entitle the Board of Education to determine whether the exclusion is reasonable, for the purpose of determining whether the guardians have a right to send to the school the children maintained by them.

Under the Elementary Education Acts a parent is entitled to free education for his child, and the local education authority have no right to insist on a money contribution as a condition of receiving his child.

Decision of Neville J. reversed. *GATESHEAD GUARDIANS v. DURHAM C. C.* - - - C. A. [1917] W. N. 240; 34 T. L. R. 65

Non-provided school—Teacher—Contract of service—Dismissal—Powers of managers—Consent of local education authority—Rights of teacher—Education Act, 1902 (2 Edw. 7, c. 42), s. 7, sub-s. 1 (c).

The provision contained in s. 7, sub-s. 1 (c), of the Education Act, 1902, requiring the consent of the local education authority to the dismissal of a teacher by the managers of a non-provided school on grounds not connected with the giving of religious instruction, was inserted, not in the interests of the teacher so as to give the teacher a right to be heard before such consent is given, but in the interests of the education authority so as to prevent instruction, for which they pay and are responsible, from being interfered with without their consent.

An agreement between the managers of a non-provided school and a teacher provided that the agreement might be determined by either party by three months' previous notice to the other party, and that, where such notice by the managers required the consent of the education authority, confirmation by such authority should be sufficient. The managers duly gave the teacher notice determining the agreement. Although the grounds of dismissal were not stated, it was admitted that no misconduct was alleged and that the dismissal was not on grounds connected with the giving of religious instruction. The teacher commenced this action to restrain the managers from proceeding until the consent of the education authority had been obtained and she had been heard in her own defence. Subsequently the education authority confirmed the dismissal:—

Held, affirming the decision of Astbury J., that neither under her agreement nor under the Education Act, 1902, had the plaintiff any such right to be heard.

Whether *Young v. Cuthbert* [1906] 1 Ch. 451 is reconcilable with *Smith v. MacNally* [1912] 1 Ch. 816, *quaere*. *BLANCHARD v. DUNLOP*

C. A. [1917] 1 Ch. 165; 85 L. J. (Ch.) 791; 15 L. G. R. 25; 115 L. T. 467; [1916] W. N. 315; 81 J. P. 9

EGYPT—Prize Court—Appeal from.
See PRIZE COURT, col. 331.

ELECTION—Will—Legacy—Bequest to wife of legacy payable out of shares standing in joint names of husband and wife—Bequest of life estate in residence to wife.

A testator whose property at his death (exclusive of certain stocks and shares standing in the joint names of the testator and his wife which at his death became by survivorship the absolute property of his wife) amounted in value to 1838*l.* by his will gave his wife a legacy of 3000*l.* "same to be paid to her either in cash or in such of my shares (including shares standing in her name jointly with mine) as she may select," and directed his executors to hold the residue of his property upon trust to pay the income to his wife during her life, and after her death to apply two-thirds in favour of a brother's children, and to hold one-third on a certain educational trust:—

Held by the C. A., affirming Barton J. [1916] 1 I. R. 248, that the testator's widow was bound to elect between the benefits conferred by the will and her claim to any of the stocks and shares invested in the joint names of herself and the testator. *In re SULLIVAN. SULLIVAN v. SULLIVAN* - - - C. A. (Ir.) [1917] 1 I. R. 38

ELECTRIC LIGHT COMPANY — Municipal corporation — Agreement — Right to purchase system — Severance of municipal district.
See CANADA, col. 69.

ELECTRIC LIGHTING — *Supply on similar terms—Similar circumstances—"Corresponding supply"—Undue preference—Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), ss. 19, 20.*

The depts. were authorized under certain private Acts to supply electricity. They charged a lower rate for electricity used for power than for electricity used for lighting, but power users were entitled to use 20 per cent. of their supply in lighting their factories. The plt. alleged that, inasmuch as power users in Hackney were charged less for their light than other consumers who took electricity for lighting purposes only, there was an undue preference shown to power users and an infringement of the provisions of the Electric Lighting Act, 1882:—

Held, that the purpose to which a consumer puts the electricity he purchases is irrelevant, that it is in the quantum of, and in the circumstances under which he takes his supply, that the answer to the question of undue preference must be looked for, that the preference prohibited by s. 20 is that between customers dealing under similar circumstances, and that a power customer whose load factor is as a general rule better, whose diversity factor is necessarily better, and whose consumption is entirely different does not take a "corresponding supply under similar circumstances" to a light customer.

Att.-Gen. v. Long Eaton U. C. [1915] 1 Ch. 124 distinguished. *ATT.-GEN. v. HACKNEY B. C.*

Astbury J. 86 L. J. (Ch.) 682; 15 L. G. R. 676; [1917] W. N. 264; 81 J. P. 297; 33 T. L. R. 548; 81 J. P. 297; 62 S. J. 25

EMERGENCY LEGISLATION.*Alien Enemy*, col. 155.*Ambassador*. See INTERNATIONAL LAW.*Ancient Lights*. See below, Courts (Emergency Powers) Acts.*Bankruptcy*. See below, Courts (Emergency Powers) Acts.*Beer (Output) Restriction*. See below, Defence of the Realm.*Contract*, col. 156.*Courts (Emergency Powers) Acts—**Ancient Lights*, col. 157.*Bankruptcy*, col. 158.*Distress for Rates*, col. 158.*Execution*. See below, *Judgment*.*Ireland*. See IRELAND.*Judgment*, col. 159.*Lease, Determination of*, col. 160.*Mortgage*, col. 160.*Trustee*, col. 161.*Defence of the Realm—**Internment*, col. 161.*Liquor Control*, col. 162.*Motor Spirit*, col. 165.*Munitions*, col. 166.*Munitions, Ministry of*. See CONTRACT.*Passports*. See APPEAL.*Prejudicing Recruiting*, col. 167.*Press Offence*, col. 167.*Requisition*, col. 168.*Shipping*, col. 169.*Increase of Rent and Mortgage Interest—**Mortgage*, col. 170.*Rent*, col. 171.*Intoxicating Liquor*. See above, Defence of the Realm.*Ireland*. See IRELAND.*Mortgage*, col. 173.**Alien Enemy.**

Enemy firm—Order of Board of Trade to wind up business—Controller—Power of, to sue for debts in name of firm—Trading with the Enemy (Amendment) Act, 1916 (5 & 6 Geo. 5, c. 105), s. 1, sub-s. 2.

Where under s. 1 of the Trading with the Enemy (Amendment) Act, 1916, the Board of Trade makes an order requiring that the business carried on in the United Kingdom by a firm of enemy nationality shall be wound up, and appointing a controller, the Board may by that order confer on the controller power to sue in the name and on behalf of the firm for debts which became due before the outbreak of war,

EMERGENCY LEGISLATION (Alien Enemy)—
continued.

without being liable to be met by the defence that the plts. are an enemy firm. CONTINHO CARO & Co. v. VERMONT & Co. Atkin J. [1917] 2 K. B. 587; 86 L. J. (K. B.) 1532; 116 L. T. 686; [1917] W. N. 225; 33 T. L. R. 461

Ambassador.

See INTERNATIONAL LAW, col. 216.

Ancient Lights.

See below, Courts (Emergency Powers) Acts, col. 157.

Bankruptcy.

See below, Courts (Emergency Powers) Acts, col. 158.

Beer (Output) Restriction.

See below, Defence of the Realm, col. 165.

Contract.

— Impossibility of performance. See CONTRACT, col. 108.

Local authority—Employee joining army—Continuance of civil pay—Resolution—Local Government (Emergency Provisions) Act, 1916 (6 & 7 Geo. 5, c. 12), s. 1.

The plt. was employed by the defts. as an electric tramcar driver at a weekly wage of 17. 11s. 6d. On Aug. 10, 1914, it was resolved by the defts., "That any officer or servant of the corporation, who, being a member of the regular, territorial or other reserve forces, may be affected by the mobilisation or embodiment consequent on the present European crisis be allowed leave of absence during his naval or military service; that he be reinstated upon his return with no loss of position or emoluments consequent on his enforced absence; that the corporation pay him (or such other person or persons as he may appoint) during such period such sums as with the pay he receives from the Government will make up his full salary or wages."

On Sept. 21, 1914, the above resolution was deleted, and in lieu thereof it was resolved "that any officer or servant of the corporation, who as a member of the regular, territorial or other reserve forces, may be affected by the mobilisation or embodiment consequent on the present European crisis, or who may volunteer and be accepted as such, and serve Great Britain afloat or ashore during this European war be allowed leave of absence during his naval or military services; that he be reinstated upon his return with no loss of position or emoluments consequent on his enforced absence; that the corporation pay him (or such other person or persons as he may appoint) during such period such sums as with the pay as he receives from the Government will make up his full salary or wages"

On Jul. 6, 1915, the plt., relying on the resolution of Sept. 21, went to the head of the tramways department of the defts. and announced his intention of volunteering for military service.

EMERGENCY LEGISLATION (Contract)—
continued.

The head of the department withheld his consent and tried to dissuade the plt. from his intention. The plt. replied that in view of the resolution he could dispense with any consent, and on Jul. 7, 1915, he volunteered and was accepted for service, and was at the date of this action serving ashore in the 5th Welsh Regiment. From Jul. 7, 1915, he was receiving pay from the Government at the rate of 8s. 2d. a week. He claimed 1l. 3s. 4d. a week from the defts., who refused to pay anything:—

Rowlatt J. *held* there was an offer contained in the resolution of Sept. 21 which, being accepted by the plt., became a binding promise by the defts. and incapable of unilateral alteration; it was given with a view to his serving with His Majesty's Forces; he took service in His Majesty's service with the sanction and permission of the defts. Therefore he was entitled to recover. There must be judgment for the plt.
SHIPTON v. CARDIFF CORPORATION

Rowlatt J. [1917] W. N. 175; 15 L. G. R. 587; 116 L. T. 687

Local authority—Employee joining army—Continuance of civil pay—Resolution—Subsequent alteration of terms of payment—Ultra vires—Local Government (Emergency Provisions) Act, 1916 (6 & 7 Geo. 5, c. 12), s. 1.

Appeal from the judgment of Ridley J., at the trial of the action without a jury [1917] W. N. 139. Appeal allowed. **DAVIES v. RHONDDA U. D. C.** - C. A. [1917] W. N. 321; 15 L. G. R. 805; 34 T. L. R. 44; 62 S. J. 69

Courts (Emergency Powers) Acts.*Ancient Lights.*

Rebuilding of premises—Prescription—Suspension of period of running—Courts (Emergency Powers) (No. 2) Act, 1916 (6 & 7 Geo. 5, c. 18), s. 3.

This was an originating summons by the plt. co., under s. 3 of the Courts (Emergency Powers) (No. 2) Act, 1916, asking for a declaration that the period commencing on May 25, 1916, and ending six months after the termination of the war, should be excluded in computing the period of the enjoyment of light required to obtain a prescriptive right under the Prescription Act, 1832, or otherwise, in relation to the windows which overlooked the applicants' property. In Dec., 1914, the applicants pulled down their premises with the view of rebuilding, but were prevented from doing so by the action of the Treasury, which informed them that capital expenditure of the kind in question was not desirable in the public interest during the war and that the building should be deferred. The proposed buildings in ordinary times would take two years to complete. There was a probability of Lloyd's Registry and the City Corporation acquiring rights, in respect of certain windows of their property, owing to the enforced delay in the erection of the applicants' buildings. Accordingly, the applicants issued their summons.

Eve J. made a declaration that the period commencing on May 25, 1916, and so long there-

EMERGENCY LEGISLATION (Courts (Emergency Powers) Acts)—
continued.

after during the continuance of the present war as the conditions referred to in clause 3 (a) of the Courts (Emergency Powers) (No. 2) Act, 1916, should continue, or the period commencing on May 25, 1916, and ending six months after the termination of the present war, whichever should be the shorter, should be excluded in computing the period of the enjoyment of light required for the purpose of obtaining a prescriptive right under the Prescription Act, 1832.
In re CITY OF LONDON REAL PROPERTY CO.

Eve J. [1917] W. N. 183

Bankruptcy.

Debtor summons—Execution or enforcement of a judgment—Leave of the Court—Courts (Emergency Powers) Act, 1914 (4 & 5 Geo. 5, c. 78), s. 1, sub-s. 1 (a).

Procedure by debtor summons is not execution or enforcement of a judgment or order of any Court within the meaning of the Courts (Emergency Powers) Act, 1914, s. 1, sub-s. 1 (a), and it is not necessary to obtain leave of the Court before issuing such a summons. *In re A DEBTOR'S SUMMONS* - C. A. [1917] 2 I. R. 417

Petition—Inability to pay owing to war—Stay of proceedings—Courts (Emergency Powers) Act, 1914 (4 & 5 Geo. 5, c. 78), s. 1, sub-s. 3.

The Court of Bankruptcy is bound to exercise the "absolute discretion" given to it by s. 1, sub-s. 3, of the Courts (Emergency Powers) Act, 1914, and where on the hearing of a bankruptcy petition a debtor's inability to pay his debts owing to circumstances attributable to the war is proved, the Court will in a proper case stay the proceedings on the petition. *In re A DEBTOR (No. 224 of 1916)* - C. A. [1916] H. B. R. 156

Distress for Rates.

Application to Court for leave to levy—Form of note on summons for warrant—Courts (Emergency Powers) Act, 1914 (4 & 5 Geo. 5, c. 78), s. 1, sub-s. 1 (a) and (b)—Courts (Emergency Powers) Rules, 1914, rr. 6, 7, and 14.

The plt. became tenant to the deft. of a house on the terms that the deft. should pay the rates. The deft. did not pay the rates, and the rating authority summoned the plt. before a Court of summary jurisdiction for non-payment. The summons had a notice on it that the Court would be asked under the Courts (Emergency Powers) Act, 1914, for a distress warrant and for leave to execute it. A distress warrant was issued and a bailiff entered. The plt. thereupon paid out the distress and brought an action against the deft. for breach of agreement. The deft. contended that the distress was illegal because a distress for rates came within s. 1, sub-s. 1 (b), of the Courts (Emergency Powers) Act, 1914, and that therefore by rr. 6 and 7 of the Courts (Emergency Powers) Rules, 1914, the application under the Act ought to have been made by a separate summons in the prescribed form. The judge held that whether the distress was illegal or not the deft. was liable, as the damage was the natural consequence of his breach of contract, and he gave judgment for the plt. for damages:—

EMERGENCY LEGISLATION (Courts (Emergency Powers) Acts)—continued.

Held, that the judge's decision and his reason for it were right, and also that even if a distress for rates came within s. 1, sub-s. 1 (b), the notice on the summons sufficiently complied with r. 7, and further, as r. 14 impliedly incorporated s. 1 of the Summary Jurisdiction Act, 1848, no objection could be taken for any defect in form.

ISAACS v. ARTIDGE - - - Div. Ct.
[1917] W. N. 346; 34 T. L. R. 102;
62 S. J. 142

Execution.

See below, *Judgment*, col. 159.

Ireland.

See IRELAND, col. 222.

Judgment.

Costs—Consent order—Leave to issue execution—“Sum of money” due under contract—Courts (Emergency Powers) Act, 1914 (4 & 5 Geo. 5, c. 78), s. 1, sub-s. 1 (a)—Courts (Emergency Powers) Act, 1917 (7 & 8 Geo. 5, c. 25), s. 6.

This was a procedure summons issued by the plt. on Apr. 30, 1917, under the Courts (Emergency Powers) Acts, 1914–1916, for the leave of the Court to proceed to execution or otherwise for the enforcement of a judgment or order made in the action on Jan. 16, 1917. The action was one brought by a wife against her husband, in effect, to enforce the provisions of a separation deed of Dec. 31, 1913, under which she was entitled to certain yearly payments according to the income of the husband, and he had persistently neglected to produce the evidence of his pecuniary position which he had covenanted by the deed to furnish periodically. By the order of Jan. 16, 1917, which was made upon the application of the plt. for further directions, it was, by consent, ordered that all further proceedings in the action be stayed, and it was ordered that it be referred to the taxing Master to tax the costs of the plt., and that such costs, when taxed, should be paid by the deft. to the plt. The costs were taxed at 61l. 9s. 6d.

Eve J. *held* that the order of Jan. 16, 1917, was not one to which the Courts (Emergency Powers) Acts, 1914–1916, applied, and there should be no order on the summons, except that the applicant should add her costs thereof to the costs ordered to be paid to her under the order of Jan. 16, 1917. *TORRES v. TORRES* - Eve J.
[1917] W. N. 263; 33 T. L. R. 547

Promissory note—Liberty to execute judgment—Action on renewal of a promissory note made after Aug. 4, 1914, for a debt incurred prior to that date—Leave unnecessary—Courts (Emergency Powers) Act, 1914 (4 & 5 Geo. 5, c. 78), s. 1 (a).

When the plt. obtains judgment in an action based on the dishonour of a promissory note made after Aug. 4, 1914, he is entitled to execute the judgment, without application for liberty to do so under s. 1 (a) of the Courts (Emergency Powers) Act, 1914, notwithstanding that the note sued upon is a renewal note given in respect of a debt incurred prior to Aug. 4, 1914. *PROVINCIAL BANK OF IRELAND v. O'DONNELL*

Gibson J. (Tr.) [1917] 2 I. R. 43

EMERGENCY LEGISLATION (Courts (Emergency Powers) Acts)—continued.*Lease, Determination of.*

Assignment of lease—Assignee becoming soldier—Leave to determine tenancy—Tenancy determined—Effect on lessee's liability—Courts (Emergency Powers) (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 13), s. 2—Bankruptcy Act, 1867 (32 & 33 Vict. c. 71), s. 23.

Appeal from a decision of Astbury J. ([1917] W. N. 244).

The assignee of a lease, having become a soldier, determined his tenancy by leave obtained in the county court, under the Courts (Emergency Powers) (Amendment) Act, 1916, s. 2. The lessor was the only other party to the application. The order of the county court provided (inter alia) that nothing in the order contained should affect any question as to the respective rights and liabilities of the lessor and lessee in respect of the premises under the lease and assignment. The lessee brought the present action against the lessor for a declaration that, as from the date of the order of the county court, the lease and the term and tenancy thereby created had been determined, and that the lessee was discharged from all future liability under the covenants therein contained. Astbury J. made the declaration claimed. The lessor appealed.

The C. A. allowed the appeal, on the ground that it was not open to the lessee to claim the benefit of the order of the county court, inasmuch as it provided in terms that it was not to affect his rights or liabilities. The purpose of the statute was obviously to relieve officers and men compelled to serve in the Army from the burden of subsisting tenancies, and in construing the Act no further effect should be given to s. 2 than the words required, except for the purpose of giving effect to the policy of the Act. *TOZER v. VIOLA* - C. A. [1917] W. N. 342;
34 T. L. R. 73; 62 S. J. 86

Mortgage.

Charging order on shares before war—Assignment after war of shares subject to charge—Action against assignees to enforce charge by sale—No leave obtained—“Sale in lieu of foreclosure”—Judgments Act, 1838 (1 & 2 Vict. c. 110), s. 84—Courts (Emergency Powers) Act, 1914 (4 & 5 Geo. 5, c. 78), s. 1, sub-s. 1 (b)—Courts (Emergency Powers) (No. 2) Act, 1916 (6 & 7 Geo. 5, c. 18), s. 1, sub-s. 1 (b).

In Feb., 1916, the defts. bought shares subject to a charging order obtained by the plt. before the war. On Jun. 27, 1916, the plt., without obtaining leave under the Courts (Emergency Powers) Acts, 1914 to 1916, issued a summons to enforce the charging order against the defts. by sale of the shares:—

Held, that the plt. being in the position of a mortgagee under the charging order was really applying for his proper remedy of “sale in lieu of foreclosure,” and as his charging order was before the war, leave was necessary under the Courts (Emergency Powers) Act, 1914, s. 1, sub-s. 1 (b), as amended by the Courts (Emergency Powers) (No. 2) Act, 1916, s. 1, sub-s. 1 (b),

EMERGENCY LEGISLATION (Courts (Emergency Powers) Acts)—*continued*.

although the defts. had only acquired the shares after the war.

D'Auvergne v. Cooper [1899] W. N. 256 commented upon.

Decision of Astbury J. ([1917] 1 Ch. 142) affirmed. *HOSACK v. ROBINS* - C. A. [1917]

1 Ch. 332; 86 L. J. (Ch.) 282; 115 L. T. 879; [1917] W. N. 48; 61 S. J. 267

Foreclosure absolute—Summons—Leave of Court—Initial and final proceedings—Courts (Emergency Powers) Act, 1914 (4 & 5 Geo. 5, c. 78), s. 1 sub-s. 1 (b)—*Courts (Emergency Powers) (No. 2) Act, 1916* (6 & 7 Geo. 5, c. 18), s. 1, sub-s. 1 (b). *REVERSIONARY INTEREST SOCIETY, LD. v. UNWIN*

Eve J. [1917] W. N. 366

Trustee.

Modifications in favour of soldiers—Applicability to executor-soldier who has delegated his trust—Courts (Emergency Powers) Act, 1914 (4 & 5 Geo. 5, c. 78), s. 1, sub-s. 1—*Courts (Emergency Powers) (Amendment) Act, 1916* (6 & 7 Geo. 5, c. 13), s. 1—*Courts (Emergency Powers) (No. 2) Act, 1916* (6 & 7 Geo. 5, c. 18), s. 1—*Courts (Emergency Powers) Act, 1917* (7 & 8 Geo. 5, c. 25), s. 8. *In re MORRIS. DE FONBLANQUE v. HALL* - *Astbury J.* [1917] W. N. 300; 62 S. J. 54

Defence of the Realm.*Internment.*

British subject—Habeas Corpus—Defence of the Realm (Consolidation) Regulations, 1914, reg. 14 (b).

The Court refused a rule nisi for a writ of habeas corpus in the case of a British subject who had been interned for 22 months under reg. 14 (b) of the Defence of the Realm (Consolidation) Regulations, 1914, the ground of the refusal being that there was evidence on which the Home Secretary could reasonably come to the conclusion that the applicant had hostile associations. *Ex parte HILDA MARGARET HOWSON* - - - C. A. 33 T. L. R. 527

British subject—Order in Council authorizing—Validity—Habeas corpus—Defence of the Realm Consolidation Act, 1914 (5 Geo. 5, c. 8), s. 1, sub-s. 1—*Defence of the Realm (Consolidation) Regulations, 1914, reg. 14b.*

Reg. 14b of the Defence of the Realm (Consolidation) Regulations, 1914, which empowers the Secretary of State to order the internment of any person "of hostile origin or associations," where on the recommendation of a competent naval or military authority it appears to him expedient for securing the public safety or the defence of the realm, is authorized by the Defence of the Realm Consolidation Act, 1914, s. 1, sub-s. 1, which confers upon the King in Council power during the continuance of the war "to issue regulations for securing the public safety and the defence of the realm"; therefore an order made in accordance with reg. 14b for the internment of a naturalized British subject of German birth is valid.

EMERGENCY LEGISLATION (Defence of the Realm)—*continued*.

So held by Lord Finlay L.C., Lord Dunedin, Lord Atkinson, and Lord Wrenbury; Lord Shaw of Dunfermline dissenting.

Decision of the C. A. [1916] 1 K. B. 738 affirmed. *REX v. HALLIDAY* - H. L. (E.) [1917] A. C. 260; 86 L. J. (K. B.) 1119;

116 L. T. 417; 25 Cox, C. C. 278; 33 T. L. R. 336; [1917] W. N. 161; 81 J. P. 237; 61 S. J. 443

Liquor Control.

Canvassing for orders in military area—Introduction of liquor on credit—Officers' and sergeants' messes—Clubs—Canteens—Defence of Realm (Amendment) (No. 3) Act, 1915 (5 & 6 Geo. 5, c. 42), s. 1, sub-s. 1—*Defence of Realm Liquor Control Regulations, 1915, reg. 2.*

The Central Liquor Control Board, by orders made under the Defence of the Realm (Amendment) (No. 3) Act, 1915, and reg. 2 of the Defence of the Realm (Liquor Control) Regulations, 1915, ordered that no person should introduce or cause to be introduced into a certain area in Wilts any intoxicating liquor unless it were paid for before it was so introduced, and that no person should solicit or canvass for orders for intoxicating liquors, except at licensed premises, but that sales either to a registered club or to a canteen carried on under the authority of a Secretary of State were not to be affected:—

Held, that the orders were not ultra vires, and that the exception as to "registered clubs" and "canteens" did not except from the operation of the orders officers' and sergeants' messes carried on under the King's Regulations and not licensed as canteens under the Licensing (Consolidation) Act, 1910, or registered as clubs under that Act. *BARKER v. SCOTT. ERHMANN AND OTHERS v. SCOTT* Div. Ct. 15 L. G. R. 916; 34 T. L. R. 22

Club—Prohibition of supply of intoxicating liquor on Sundays—Intended delivery to member—"Supply."

An order of the Central Control Board (Liquor Traffic) prohibited the supply of intoxicating liquor in all clubs in a certain district on Sundays. On a Sunday subsequent to the making of the order the police entered a club within the specified district. A constable saw B., the steward of the club, coming from the direction of the cellar with a vessel in his hand containing beer which he (B.) admittedly was about to deliver to one W., a member of the club, who was on the premises. The beer did not leave B.'s possession until the constable took it from him:—

Held, that, in these circumstances, B. could not be convicted of supplying the beer to W. in contravention of the order. *BAILEY v. SAUNDERS* - Div. Ct. 86 L. J. (K. B.) 1066; 15 L. G. R. 594; 116 L. T. 573; 81 J. P. 285; 61 S. J. 526

Compulsory acquisition of licensed premises by Central Control Board—Right of owners to compensation—Mode of assessment—Compulsorily or by agreement—Defence of the Realm (Amendment) (No. 3) Act, 1915 (5 & 6 Geo. 5,

EMERGENCY LEGISLATION (Defence of the Realm)—continued.

c. 42)—*Defence of the Realm (Liquor Control) Regulations, 1915—Lands Clauses Consolidation Act, 1845* (8 Vict. c. 18), ss. 2, 68.

By the Defence of the Realm (Liquor Control) Regulations, 1915, issued pursuant to the Defence of the Realm (Amendment) (No. 3) Act, 1915, the Central Control Board (Liquor Traffic) was constituted as the prescribed Government authority under the Act to control the sale and supply of intoxicating liquor in defined military and munition areas during the continuance of the present war, and for a period not exceeding twelve months after the termination of the war. By reg. 6 the Board were authorized to acquire, compulsorily or by agreement, either for the period during which the regulations took effect or permanently, any licensed or other premises within the area. By reg. 7, where the Board have determined to acquire compulsorily any premises, they should serve a specified notice, and at the expiration of ten days from the service of the notice the fee simple or other specified interest in the premises would vest in trustees for the Board. By Order in Council of Aug. 2, 1915, a Commission was appointed to inquire, determine and report what sums (in cases not otherwise provided for) ought in reason and fairness to be paid out of public funds in respect of direct and substantial loss incurred by reason of interference with property by the prescribed Government authority under the Act. On Sept. 24, 1915, by Order in Council, an area was defined, called the London area, to which the regulations were applied. The plt. co. were the owners in fee simple of licensed premises within the London area. On Dec. 22, 1915, the Board gave the prescribed notice under reg. 7 to acquire the fee simple in these premises compulsorily, and on Jan. 4, 1916, they took over these premises, the fee simple of which had then vested in the trustees for the Board under the regulations. The co. contended that it was entitled to have compensation for the taking of the premises assessed under the Lands Clauses Consolidation Act, 1845, while the Board contended that the co. was only entitled to such compensation as should be recommended by the Commission and paid out of public funds as an act of grace. The Commission would only consider the application of the co. if it waived its legal rights:—

Held, that the co. was entitled as of right to payment; that the Lands Clauses Consolidation Act, 1845, applied to the Defence of the Realm (Amendment) (No. 3) Act, 1915, and the regulations, which together constituted the "special Act"; that the words "compulsorily or by agreement" connoted the Lands Clauses Consolidation Act, 1845; that the Board were promoters of an authorized undertaking within the Lands Clauses Consolidation Act, 1845; that the prerogative of the Crown did not apply to the action of the Board; and that the contention of the co. was right.

Comms. of Public Works v. Lyan [1903] A. C. 355; *Att.-Gen. v. Horner* (1884) 14 Q. B. D. 245; *Reg. v. Abbott* [1897] 2 I. R. 362, and *In re Wood and Comms. of Works* (1886)

EMERGENCY LEGISLATION (Defence of the Realm)—continued.

31 Ch. D. 607 applied. *CANNON BREWERY CO. v. CENTRAL CONTROL BOARD (LIQUOR TRAFFIC)* *Younger J.* 86 L. J. (Ch.) 756; [1917] W. N. 290; 83 T. L. E. 567; 61 S. J. 709

Licensed premises—Hours of closing—Sale within prohibited hours—Evidence—Order of Central Control Board (Liquor Traffic).

The Central Control Board (Liquor Traffic) made an order prohibiting the sale of intoxicating liquor in a certain area between 2.30 P.M. and 6 P.M. A person went into certain licensed premises within that area shortly before 2.30 P.M. and was supplied with a bottle of stout to take home with him; and he left at 2.30 P.M., taking the bottle of stout with him. He returned at 3 P.M., and was supplied with a bottle of non-alcoholic stout. A constable who visited the premises at 3.30 P.M. found the man sitting in the bar with an uncorked bottle of stout on the table before him, part of its contents having been consumed. An empty stout bottle was also on the table. When the constable entered, the man put his hand in front of the bottle containing stout. The man told the constable that he did not know anything about the bottle; that it was not his; and that he had not brought it into the house. The licensee of the premises, when summoned for selling intoxicating liquor between 2.30 P.M. and 6 P.M., gave evidence that he did not sell any intoxicating liquor after 2.30 P.M., and that he did not know anything about the bottle of stout, unless it had been served before 2.30 P.M. The customer gave evidence that the bottle of stout before him on the table was the one which he had purchased before 2.30 P.M.:

Held, that there was evidence upon which the justices were entitled to hold, as they did, that there had been a sale of intoxicating liquor after 2.30 P.M., and that therefore the conviction must be affirmed. *WILLIAMS v. TIPPETT*

Div. Ct. 86 L. J. (K. B.) 828; 15 L. G. R. 527; 117 L. T. 56; 81 J. P. 139

Licensed premises—Sale of intoxicating liquor on two different occasions—One information—Treating—Conviction—Validity—Duplicitly—Defence of the Realm (Liquor Control) Regulations, 1915, reg. 7.

The appellant, the licensee of a public-house at Knutsford, was convicted on one information for supplying on two different occasions on the same evening intoxicating liquor to be consumed on his licensed premises by persons who had not paid for the liquor, contrary to reg. 7 of the Defence of the Realm (Liquor Control) Regulations, 1915.

On appeal, *held*, by Viscount Reading C.J., that although the conviction was not bad for duplicity, there being only one offence—the supplying of liquor contrary to the regulations—it was bad because the justices heard evidence as to what took place on each of the two occasions before deciding to convict with reference to either; by Ridley J., that the conviction was bad for duplicity; by Avory J., that the conviction was bad because it was not apparent

EMERGENCY LEGISLATION (Defence of the Realm)—continued.

with regard to which of the acts complained of the appellant had been convicted. *PARKER v. SUTHERLAND* - Div. Ct. 86 L. J. (K. B.) 1052; 15 L. G. R. 535; 116 L. T. 820; 33 T. L. R. 350; 81 J. P. 197

Output of beer—Supply of beer to free house—Particulars and certificate of supply—Tied house becoming a free house—Standard year—Output of Beer (Restriction) Act, 1916 (6 & 7 Geo. 5, c. 26), s. 5, sub-s. 1.

Under s. 5, sub-s. 1, of the Output of Beer (Restriction) Act, 1916, the occupier of a free licensed house is entitled to obtain particulars and a certificate as to the beer supplied to him for the whole of the standard year notwithstanding that his house has been tied for three-quarters of the year. *FISHER v. THOMAS RAWSON & Co.* - Eve J. 86 L. J. (Ch.) 519; 116 L. T. 210; [1917] W. N. 112; 33 T. L. R. 256; 81 J. P. 97; 61 S. J. 388

Supply otherwise than by way of sale.

The respondent was the occupier of licensed premises in an area in which an order of the Central Control Board (Liquor Traffic) was in operation, and a customer called at the premises during the hours when the sale and supply of intoxicating liquor were permitted by the order, and she ordered and paid for a dozen bottles of beer. The barman appropriated a dozen bottles to the customer and promised to deliver them but forgot to do so. On the same evening, during prohibited hours, the customer called at the premises, and the barman gave her the beer.

Held, that though there had been a sale during legal hours there was nevertheless a "supply otherwise than by way of sale" during prohibited hours and the respondent was liable to be convicted of supplying the liquor otherwise than within the hours prescribed by the order. *EMERSON v. HALL-DALWOOD*

Div. Ct. 84 T. L. R. 153

Motor Spirit.

Use of—Definition of—Liquid containing hydrocarbon — Inflammability — Temperature — Finance (1909–10) Act, 1910 (10 Edw. 7, c. 8), s. 84, sub-ss. 7, 8—Defence of the Realm (Consolidation) Regulations, 1914, reg. 8c.

Reg. 8c of the Defence of the Realm (Consolidation) Regulations, 1914, prohibits the use for certain purposes of motor spirit, and provides that the expression "motor spirit" shall have the same meaning as in Part VI. of the Finance (1909–10) Act, 1910.

The appellants were convicted by justices under reg. 8c of using motor spirit which admittedly came within the definition of "motor spirit" in Part VI., s. 84, sub-s. 7, of the Finance (1909–10) Act, 1910. There was no evidence before the justices that the liquid in question was inflammable at a temperature of less than 73 deg. F. or at any other temperature:—

Held, that the conviction was right, since there was no provision in the Finance (1909–10) Act, 1910, that the word "inflammable" meant

EMERGENCY LEGISLATION (Defence of the Realm)—continued.

inflammable at or below any particular temperature; since there was no reference in the Act to s. 2 of the Petroleum Act, 1879, which contains a definition to that effect; and since sub-s. 8 of s. 84 in no way restricted or limited the definition contained in sub-s. 7. *LLANDUDNO MOTOR AND GARAGE CO. v. GUEST*

Div. Ct. 86 L. J. (K. B.) 886; 15 L. G. R. 523; 116 L. T. 597; [1917] W. N. 148; 81 J. P. 157

Munitions.

Giving of employment to person not holding a leaving certificate—"Giving of employment"—Licensed house—Agreement of tenancy—Tenant engaged on munitions work—Landlords charged with "giving employment" to tenant—Munitions of War (Amendment) Act, 1916 (5 & 6 Geo. 5, c. 99), s. 5, sub-s. 1.

By s. 5, sub-s. 1, of the Munitions of War (Amendment) Act, 1916, it is provided: "Section 7 of the principal Act, 1915, shall have effect as if for sub-sections (1.) and (2.) of that section the following two sub-sections were substituted: (1.) A person shall not give employment to a workman who has within the last previous six weeks, or such other period as may be provided by the Minister of Munitions as respects any class or establishment, been employed on or in connection with munitions work in any establishment of a class to which the provisions of this section are applied by order of the Minister of Munitions, unless he holds a certificate from the employer by whom he was last employed, or from a munitions tribunal, that he is free to accept other employment."

The appellants were brewers and owners of a public-house. They entered into an agreement with a person employed as a skilled workman at a munitions establishment providing for his taking this public-house as tenant for a year, at a rent therein mentioned, and subject to the ordinary provisions of such agreements.

The landlords were charged before a munitions tribunal with committing an offence against s. 5, sub-s. 1, of the Munitions of War (Amendment) Act, 1916, by giving employment to the tenant, who did not hold a leaving certificate from his employers in the munitions establishment:—

Held, that entering into such an agreement of tenancy did not constitute the giving of employment by the landlords to the tenant within the meaning of s. 5, sub-s. 1, of the Munitions of War (Amendment) Act, 1916. *ALDERSON & Co. v. G. F. SMITH, LD.*

Atkin J. 81 J. P. 169

Munitions, Ministry of.

—Reservoir, Construction of—Stoppage of works by order of Minister of Munitions—Contract.

See CONTRACT, col. 108.

Passports.

—Obtaining by misrepresentations—Appeal to C. A.—Criminal cause or matter—Jurisdiction.

See APPEAL, col. 23.

EMERGENCY LEGISLATION (Defence of the Realm)—continued.*Prejudicing Recruiting.*

Spreading reports — Recruiting — Offence committed more than six months before hearing—Hearing before Court of summary jurisdiction—Jurisdiction of Court—Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 11—Defence of the Realm Regulations Consolidated, regs. 27, 56.

By reg. 27 of the Defence of the Realm Regulations Consolidated it is an offence for any person to spread reports intended or likely to prejudice the recruiting of His Majesty's Forces, and by reg. 56 a person charged with an offence against the regulations may be tried either by a court-martial, or by a civil Court with a jury, or by a Court of summary jurisdiction. Where a person was charged before a Court of summary jurisdiction with an offence under reg. 27 of the regulations:—

Held, that the limitation imposed by s. 11 of the Summary Jurisdiction Act, 1848, had no application, and that the Court had jurisdiction to deal with the case, although there was no evidence that the offence had been committed within six months of the date of the hearing. *KAYE v. COLE* - Div. Ct. 86 L. J. (K. B.) 1084; 15 L. G. R. 45; 115 L. T. 783; 33 T. L. R. 30; 81 J. P. 3

Press Offence.

Communication of information as to movement of forces—Communication by one Press representative to another “for private information.”

Reg. 18 of the Defence of the Realm (Consolidation) Regulations, 1914, makes it an offence for any person to communicate, or attempt to elicit, any information with respect to the movement, numbers, description, condition, or disposition of any of His Majesty's Forces. Under reg. 56 (13.), however, if the offence against the regulation appears to the Director of Public Prosecutions in England to be a Press offence, the case, instead of being referred to the competent naval or military authority, must be referred to the Director of Public Prosecutions to determine whether the case shall be proceeded with. “Press offence” was defined as “the publication or attempted publication, or communication or attempted communication for publication, in any newspaper or other periodical, . . . of any information, . . . in contravention of the provisions of these regulations, . . .”

The editor of a provincial newspaper, in the course of a conversation over the telephone with a London Press agency, said: “For private information. Putting a lot of troops at Deal and Sandwich all day; arriving all day; several thousands; expect some liveliness on sea.” Proceedings were taken against him under reg. 18 by the competent military authority without the matter having been referred to the Director of Public Prosecutions, but the justices dismissed the information:—

Held, that, having regard to the circumstances under which the conversation took place, it was a communication or attempted communication of information for publication in a newspaper, notwithstanding the use of the

EMERGENCY LEGISLATION (Defence of the Realm)—continued.

words “for private information,” and that therefore the alleged offence was a Press offence, and the case ought to have been referred to the Director of Public Prosecutions before the proceedings were instituted. If it is possible on investigation that an alleged offence against the regulations may turn out to be a Press offence, the matter must be referred to the Director of Public Prosecutions to decide whether or not proceedings shall be instituted. *FOX v. SPICER* - Div. Ct. 86 L. J. (K. B.) 580; 15 L. G. R. 151; 116 L. T. 86; [1917] W. N. 28; 33 T. L. R. 172; 81 J. P. 71

Requisition.

Validity—Contract—Requisition by Army Council—Interference with fulfilment of contract—Defence of the Realm Regulations, reg. 2 B—Defence of the Realm Consolidation Act, 1914 (5 Geo. 5, c. 8), s. 1, sub-s. 1—Defence of the Realm (Amendment) No. 2, Act, 1915 (5 & 6 Geo. 5, c. 37), s. 1, sub-s. 2.

Reg. 2B of the Defence of the Realm Regulations (in the form in which it was on Aug. 17, 1916, and still is with certain alterations not material to this report), which gives power to the Army Council to take possession of any food and any articles required for the production thereof, is within the power given to His Majesty in Council by s. 1, sub-s. 1, of the Defence of the Realm Consolidation Act, 1914, to make regulations for the purpose of securing the public safety and defence of the realm, and is therefore not ultra vires.

An exercise of the powers under the regulation for the purpose of procuring a substantial quantity of a necessary supply (e.g., raspberries) for the use of the troops is an exercise of the powers for securing the public safety and defence of the realm.

On Aug. 17, 1916, the Army Council delivered to a firm of raspberry growers a requisition requiring them to place at the disposal of the Army Council a quantity of raspberries and to deliver the same to such persons and in such amounts as the Director of Army Contracts might direct. The raspberries requisitioned were in substance gathered after the date of the requisition:—

Held, that reg. 2B contemplates the separate existence as chattels of the articles to be taken possession of and does not give the right to take possession of growing crops; but that as the requisition, upon its true construction, was a notice of intention to take possession of the raspberries when gathered, it was within the powers given by reg. 2B. *LIFTON, LD. v. FORD ATKIN J.* [1917] 2 K. B. 647; 86 L. J. (K. B.) 1241; 15 L. G. R. 699; 116 L. T. 632; [1917] W. N. 222; 33 T. L. R. 459

Shipping—Shipping controller—Powers—Action against public officer in his official capacity—New Ministries and Secretaries Act, 1916 (6 & 7 Geo. 5, c. 68), ss. 5, 6—Defence of the Realm Regulations, reg. 39 BBB.

By s. 6 of the New Ministries and Secretaries Act, 1916, “It shall be the duty of the Shipping Controller to control and regulate any shipping

EMERGENCY LEGISLATION (Defence of the Realm)—continued.

available for the needs of the country in such manner as to make the best use thereof . . . , and to take such steps as he thinks best for providing and maintaining an efficient supply of shipping, and for those purposes he shall have such powers . . . as may be conferred on him by regulations under the Defence of the Realm Consolidation Act, 1914. . . ."

By reg. 39 BBB of the Defence of the Realm (Consolidation) Regulations, made under the Defence of the Realm Consolidation Act, 1914, and s. 6 of the New Ministries and Secretaries Act, 1916, "The Shipping Controller may by order requisition or require to be placed at his disposal, in order that they may be used in the manner best suited for the needs of the country, any ships . . . and require ships so requisitioned to be delivered to the Controller or any person or persons named by him . . . where it appears to the Controller necessary or expedient to make any such order . . ."

The Shipping Controller made an order formulating a scheme whereby he requisitioned the p.lts.' ships, the owners' services, and the profits:—

Held, that the scheme must be judged as a whole, that reg. 39 BBB contained no power to requisition the services of the owners, and therefore the scheme was ultra vires in this respect and the order could not be supported.

An action will lie against an officer of State, whether he is the head of a department or not, for a declaration that an act done by him is not authorized by statute, and such action need not be brought against the Att.-Gen. as representing the Crown. *CHINA MUTUAL STEAM NAVIGATION Co. v. MACLAY* . . . Bailhache J.

[1917] W. N. 345 ; 34 T. L. R. 81

Shipping.

Declaration as to destination of goods—Customs (War Powers) Act, 1915 (5 & 6 Geo. 5, c. 31), s. 5, sub-s. 1—Customs (War Powers) Act, 1915 (5 & 6 Geo. 5, c. 102), s. 2, sub-s. 2—Recovery of penalties—Competency of defences—Defence that goods have not reached enemy territory—Defence that exporter took reasonable steps with regard to destination.

Where an exporter has made a declaration, under the Order of the Commrs. of Customs and Excise of Apr. 26, 1915, as to the destination of goods shipped by him, and has been called upon, and has failed, to satisfy the Commrs. that the goods have not reached an enemy country, it is not competent for him, in defence to an action for recovery of penalties under s. 5, sub-s. 1, of the Customs (War Powers) Act, 1915, to tender evidence that the goods have not de facto reached an enemy country. The only defence open to him is that, if they have, it has not been with his consent and connivance, and that he has taken all reasonable steps to secure that the ultimate destination of the goods should be the destination mentioned in the declaration.

Circumstances in which *held* that an exporter had failed to prove that he had taken all reasonable steps to secure that the ultimate destination of the goods should be the declared destination.

EMERGENCY LEGISLATION (Defence of the Realm)—continued. .

Observations upon the scope and effect of sub-s. 2 of s. 2 of the Customs (War Powers) Act, 1916. *LORD ADVOCATE v. VAN WHEEL*
Lord Cullen (Sc.) 1917 S. C. 227

Seaman—Refusal to join—Absence of articles—Meaning of "lawfully engaged"—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 221—Defence of the Realm Regulations Consolidated, 1917, reg. 39A.

By reg. 39A of the Defence of the Realm Regulations Consolidated, 1917, "If a person lawfully engaged to serve on board any ship or vessel belonging to or chartered, hired, or requisitioned by the Admiralty or Army Council . . . neglects or refuses without reasonable excuse to join his ship or vessel . . . he shall be guilty of an offence . . .":—

Held, that where a seaman has agreed to serve on a requisitioned ship and to proceed to a port to sign articles thereon and afterwards refuses to carry out the agreement, the fact that he has not signed articles does not prevent him from being "lawfully engaged" and from being liable to be convicted under the above regulation for refusing to join his ship. *HAYS v. BROWN*.

Div. Ct. 81 J. P. 300 ; 117 L. T. 408

—Shipping Controller—Powers.

See above, Requisition, col. 168.

Increase of Rent and Mortgage Interest.**Mortgage.**

Banker and customer—Overdraft—Recovery—"Equitable charge by deposit of title deeds"—Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (5 & 6 Geo. 5, c. 97), s. 1, sub-s. 4 ; s. 2, sub-s. 4.

The debt., by deed dated Dec. 14, 1912, declared (inter alia) as follows: "I have deposited with you the deeds and documents mentioned in the schedule hereto as security for the payment of all moneys for the time being due or owing to you on my account whatsoever, as well after the termination as during the relationship of the customer and banker. And I undertake that I will pay to you on demand in writing such of the said moneys as for the time being shall be actually due to you, and by this deed, I charge all my present and future estate and interest, both legal and equitable, in all the hereditaments and other property comprised in the said documents. And I declare that you shall accordingly be deemed mortgagees under this deed of all the said premises hereby charged. And I undertake that I and all necessary parties (if any) will on any request for this purpose . . . make execute and deliver to you such further valid legal or other mortgage or mortgages by deed or otherwise of the premises hereby charged as you may require":—

Held, that the deed was not a "mortgage" within the meaning of sub-s. 4 of s. 1 of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, but was an equitable charge within sub-s. 4 (b) of s. 2 of the Act, and was excepted from the operation of the Act. Therefore s. 1, sub-s. 4, afforded no defence to

EMERGENCY LEGISLATION (Increase of Rent and Mortgage Interest)—continued.

the action. LONDON COUNTY AND WESTMINSTER BANK v. TOMPKINS - - - Shearman J.
86 L. J. (K. B.) 1521; 117 L. T. 311;
[1917] W. N. 228; 33 T. L. R. 471

Equitable charge—Emergency powers—Enforcement of security—“Equitable charge by deposit of title deeds or otherwise”—Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (5 & 6 Geo. 5, c. 97), s. 2, sub-s. 4.

A signed and dated document, stating as follows: “I, A. B., hereby charge in favour of C. D. all my estate and interest in X., Y., and Z. to secure all moneys due and to become due from me to him, and I agree to give him proper and formal charges thereon in such form as he may approve within a fortnight or as near thereto as may be.” An action was commenced for a declaration and for accounts, foreclosure, or sale. On an application by the deft. to stay the action on the ground that the plt. had not complied with the provisions of the Courts (Emergency Powers) Acts, 1914 to 1916, and the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915:—

Held, that this document created an equitable charge not created by the deposit of deeds. Application dismissed.

Durham Brothers v. Robertson [1898] 1 Q. B. 765 applied. JONES v. WOODWARD - Sargant J.
116 L. T. 378; [1917] W. N. 61; 61 S. J. 283

Foreclosure absolute—Mortgagee in possession—Interest in arrear—Property out of repair—Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (5 & 6 Geo. 5, c. 97), s. 1, sub-s. 4.

The proviso at the end of s. 1, sub-s. 4, of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (5 & 6 Geo. 5, c. 97), under which the section does not affect the power of sale of a mortgagee in possession on Nov. 25, 1914, does not mean that in every case where a mortgagee was in possession his remedies are now limited to the exercising of his power of sale, but is only inserted ex abundanti cautela. WALTERS v. WHITE - Sargant J.
116 L. T. 377; [1917] W. N. 14; 33 T. L. R. 154; 61 S. J. 253

Mortgagee in possession—Power of sale—Courts (Emergency Powers) Act, 1914 (4 & 5 Geo. 5, c. 78), s. 1, sub-s. 1 (b).

The expression “mortgagee in possession” in s. 1, sub-s. 1 (b), of the Courts (Emergency Powers) Act, 1914, means a mortgagee who has taken possession without leave of the Court. *In re PROVIDENT ASSOCIATION OF LONDON, LD. AND GOLLOGLY'S CONTRACT* O'Connor M.R. [1917] 1 I. R. 240

Rent.

Dwelling-house rented at less than 26l. a year—Rent increased before Nov. 25, 1915—Payment by tenant till Jan. 31, 1916—Right of tenant to recover amount paid in excess of standard rent—“Fine, premium, or other like sum in addition to rent”—Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (5 & 6 Geo. 5, c. 97), s. 1, sub-s. 1, 2; s. 2, sub-s. 1, 2 (c).

EMERGENCY LEGISLATION (Increase of Rent and Mortgage Interest)—continued.

The Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, provides by s. 1, sub-s. 1, that where the rent of a dwelling-house to which the Act applies has been, since the commencement of the present war, increased above the standard rent (the rent at which the house payable was let on Aug. 3, 1914), the amount by which the rent exceeds the standard rent shall, notwithstanding any agreement to the contrary, be irrecoverable, with a proviso that the sub-section shall not apply to rent accrued due before Nov. 25, 1915; and by s. 1, sub-s. 2, that a person shall not, in consideration of the grant, renewal, or continuance of a tenancy of any dwelling-house to which the Act applies, require the payment of any fine, premium, or like sum in addition to the rent, and when any such payment has been made after Nov. 25, 1915, then the amount shall be recoverable by the tenant and may be deducted by him from any rent payable by him to the landlord. The Act came into force on Dec. 23, 1915.

The landlord of a dwelling-house, to which the Act applied, in Mar., 1915, increased the tenant's rent by 6d. a week. The tenant paid the increased rent and, in ignorance of the Act, continued to do so until Jan. 31, 1916. Having then become aware of the Act, he deducted from his subsequent payment of rent the total amount of the increase over the standard rent which he had paid between Nov. 25, 1915, and Jan. 31, 1916. In an action by the landlord to recover the amount so deducted:—

Held, (1.) that the amount overpaid by the tenant was not a “fine, premium, or other like sum” which he was entitled to deduct from his rent under s. 1, sub-s. 2; and (2.) that although the Act provided that the increase beyond the standard rent was not recoverable by the landlord if the tenant had not paid it, yet the tenant, having paid it under mistake of law, was not entitled to recover it from the landlord in any shape or form.

Decision of the Div. Ct. (Ridley and Avory JJ.) reversed. SHARP BROTHERS & KNIGHT v. CHANT - C. A. [1917] 1 K. B. 771; 86 L. J. (K. B.) 608; 116 L. T. 185; [1917] W. N. 84; 33 T. L. R. 235; 61 S. J. 352

Increase of—Dwelling-house—Improvements—Notice in writing—Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (5 & 6 Geo. 5, c. 97), s. 1, sub-s. 1 (ii.) and (vi.).

Appeal from the Doncaster County Court. The standard rent of a dwelling-house within the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, was 5s. 3d. a week. On Oct. 16, 1915, the landlord increased the rent. He sought to justify the increase on the ground that he had since the commencement of the war incurred expenditure on improvements within s. 1, sub-s. 1 (ii.), of the Act. No notice in writing of any intention to increase the rent was ever given by the landlord to the tenant under s. 1, sub-s. 1 (vi.), of the Act. The tenant paid the increased rent until Feb. 5, 1916, after which he refused to pay the increase. The landlord claimed possession of the house and mesne profits. The tenant offered the standard rent

EMERGENCY LEGISLATION (Increase of Rent and Mortgage Interest)—*continued*.

in circumstances which constituted the offer an unconditional tender thereof.

The county court judge gave judgment for the plt. The deft. appealed.

The Div. Ct. *held* that the words in s. 1, sub-s. 1 (ii.), "shall not be deemed to be an increase," mean "shall not be deemed a prohibited increase"; that the increase dealt with in s. 1, sub-s. 1 (ii.), is referred to in s. 1, sub-s. 1 (vi.), as an increase "by this Act permitted"; and that it may be recovered, but only if the notice specified in s. 1, sub-s. 1 (vi.), is duly given.

The appeal was allowed on the ground that notice had not been given. *WORTLEY v. MANN*
Div. Ct. [1916] W. N. 390

Intoxicating Liquor.

See above, Defence of the Realm, col. 162.

Ireland.

See IRELAND, col. 222.

Mortgage.

See above, Courts (Emergency Powers) Acts, col. 160, and Increase of Rent and Mortgage Interest, col. 170

EMOLUMENTS—Seaman.

See SHIPPING, col. 418

EMPLOYER AND WORKMAN.

See MASTER AND SERVANT and WORKMEN'S COMPENSATION.

EMPLOYMENT—Accident arising out of and in the course of.

See WORKMEN'S COMPENSATION, col. 486.

— Covenant not to leave.

See CONTRACT, col. 107.

— Termination.

See WORKMEN'S COMPENSATION, col. 514.

ENEMIES, KING'S—Adhering to.

See CRIMINAL LAW, col. 133.

ENEMY—Aircraft—Fire caused by incendiary bombs dropped by—Insurance.

See LANDLORD AND TENANT, col. 245

— Alien.

See ALIEN ENEMY.

— Armed ship.

See PRIZE COURT, col. 329.

— Destination—Prize Court.

See PRIZE COURT, col. 318.

— Firm—Order of Board of Trade to wind up business—Controller.

See EMERGENCY LEGISLATION, col. 155.

— Property.

See PRIZE COURT, col. 324.

— Ship.

See PRIZE COURT, col. 329.

ENEMY—*continued*.

— Trading between British and neutral branches of.

See PRIZE COURT, col. 322.

— Transfer of goods to, after seizure.

See PRIZE COURT, col. 328.

— Vendors.

See PRIZE COURT, col. 324.

— Warship—Destruction of—Aeroplane assistance—Prize bounty.

See PRIZE COURT, col. 329.

ENGAGEMENT RING—Contract—Marriage—Right to return of ring.

See MARRIAGE, col. 270.

EQUITABLE CHARGE.

See EMERGENCY LEGISLATION, col. 170.

EQUITABLE ESTATES IN FEE SIMPLE.

See SETTLEMENT (PROPERTY), col. 388.

EQUITABLE EXECUTION—County court—Receiver—Costs—Scale—"Amount of debt and costs."

See COUNTY COURT, col. 119.

EQUITABLE LIFE ESTATE.

See WILL.

ERROR—Description of interest.

See INSURANCE (MARINE), col. 207.

ESTATE—Implication.

See WILL, col. 471.

ESTATE DUTY.

See REVENUE, col. 353, and WILL, col. 465.

ESTOPPEL—Bill of lading.

See SHIPPING, col. 393.

— Carrier—Theft by servant—Prosecution by carrier—Action against carrier—Ratification.

See CARRIER, col. 78.

— Company—Debentures.

See COMPANY, col. 89.

— Notice—Frontages—Local Government.

See LOCAL GOVERNMENT, col. 263.

Representation—Intention of person making representation that it should be acted upon—Belief of person to whom representation made.

The appellant's deceased father was the owner of property in respect of which the respondent council served a notice under s. 150 of the Public Health Act, 1875, requiring "the executors" of the deceased to sewer and pave the road on which the property abutted. The notice was received by the appellant, who, at an interview with the respondents' clerk, repudiated liability solely on the ground that by virtue of a deed which had been made between his father and an adjoining proprietor the latter had agreed to keep the road in good repair. Correspondence passed between the appellant and the respondents on the subject, the respondents' letters being addressed to "the executors," or to "the trustees," of the appellant's father,

ESTOPPEL—*continued.*

and the appellant in one of his letters in reply described himself as trustee of his father's will. The appellant was not in fact his father's executor, but the respondents, believing that he was, carried out the sewerage and paving work, and took proceedings to recover the cost from the appellant. The justices made an order upon the appellant to pay the amount, and an appeal from this order was dismissed by quarter sessions on the ground that the appellant had induced the respondents to believe, and was estopped from denying, that he was his father's executor. Quarter sessions, however, stated a case for the opinion of the High Court, in which there was no finding that the appellant intended the respondents to believe that he was his father's executor, or that the respondents believed the appellant to have this intention:—

Held, allowing the appeal, that, in the absence of such findings, the appellant was not estopped from denying that he was his father's executor.

Freeman v. Cooke (1848) 2 Ex. 654 followed.

PIERSON v. ALTRINCHAM U. D. C.

Div. Ct. 86 L. J. (K. B.) 969; 116 L. T. 314;
15 L. G. R. 228

EVIDENCE—*Action to perpetuate testimony—Depositions—Confidential documents—Proceedings in Probate Division—Practice—Motion for publication of depositions and exhibits.*

This was a motion by the plts. in an action for the perpetuation of testimony commenced on Feb. 26, 1913, asking that the depositions of certain witnesses examined in the action on behalf of the plts. might be published in a cause pending in the Probate Division, and that the proper officer might be ordered to attend at the trial of the said cause and produce the original record of the proceedings in the present action together with the original depositions of the same witnesses and all exhibits and documents filed and deposited therewith, and, further, that all parties might be at liberty to inspect and take photographs or other facsimile copies of all exhibits and other documents filed or deposited with the same depositions.

Eve J. said he would make the order (which seemed to be in accordance with the practice) that the depositions and exhibits should be published, and that all parties might inspect the same and take photographs. The costs would be reserved until after the proceedings in the Probate Division had been disposed of. *ANSON v. TOOTH AND ATT.-GEN.* - - - Eve J.
[1917] W. N. 234; 34 T. L. R. 100;
62 S. J. 103

— Arbitrator.

See COMPENSATION, col. 102.

— Bastardy—Corroboration—Opportunity.

See BASTARDY, col. 65.

— Court of Appeal—Admission of further.

See NEGLIGENCE, col. 287.

— Criminal law.

See CRIMINAL LAW, col. 129.

— Divorce.

See DIVORCE, col. 143.

EVIDENCE—*continued.*

— Foreign marriage—Expert.

See CRIMINAL LAW, col. 129, and
DIVORCE, col. 145.

— Habitual criminal—Previous conviction as habitual criminal.

See CRIMINAL LAW, col. 130.

— Hackney Carriage Register.

See HACKNEY CARRIAGE, col. 186.

— Indecent assault—Complaint by prosecutrix.

See CRIMINAL LAW, col. 131.

— Insurance—Loss or damage.

See INSURANCE, col. 205.

— Lost will—Contents.

See PROBATE, col. 334.

— Merger — Intention — Interest — Subsequent dealings.

See MERGER, col. 276.

— Notice—Service.

See RATES, col. 345.

— Perjury.

See CRIMINAL LAW, col. 132

— Perpetuation of testimony.

See IRELAND, col. 222.

— Poor rate—Admissibility—Appeal.

See RATES, col. 343.

— Power of appointment—Execution.

See POWER OF APPOINTMENT, col. 307.

— Proof, Burden of—Insurance.

See INSURANCE (LOSS), col. 205.

— Specific performance.

See VENDOR AND PURCHASER, col. 451.

— Theft—Insurance.

See INSURANCE (LOSS), col. 205.

— Usage — Contract — Admissibility of — Inconsistent with contract.

See SALE OF GOODS, col. 369.

EX PARTE APPLICATION—Rule nisi—Prohibition.

See REVENUE, col. 359.

EXAMINATION—Bankruptcy—Witness.

See BANKRUPTCY, col. 64.

EXCEPTION—Bill of lading.

See SHIPPING, col. 393.

— Insurance.

See INSURANCE (LOSS), col. 205.

— Mines and minerals—Partition.

See MINES, col. 278.

EXCESS MINERAL RIGHTS DUTY.

See REVENUE, col. 355.

EXCESS OF PRIVILEGE—Libel.

See DEFAMATION, col. 137.

EXCESS PROFITS DUTY—Deduction.

See COMMISSION, col. 83, *COMPANY*,
col. 95, and *REVENUE*, col. 355.

Sale of business—Purchase-money payable by instalments—"One third of the net profits" of each year—Deduction—Finance (No. 2) Act, 1915 (5 & 6 Geo. 5, c. 89), Pt. II., s. 35; Pt. III.

EXCESS PROFITS DUTY—*continued.*

An agreement made in Apr., 1914, for the sale of a business provided that part of the consideration should be paid by "one equal third part of the nett profits" of the business in the year ending Sept. 30, 1914, and in each succeeding year up to Mar. 31, 1919 :—

Held, that "nett profits" meant the profits of the year's trading which were divisible among the persons interested, and that consequently, as excess profits duty must be deducted before the profits which were divisible could be ascertained, the vendors were only entitled to one third part of the profits after excess profits duty had been deducted.

Collins v. Sedgwick [1917] 1 Ch. 179 followed.
William Hollins & Co. v. Paget [1917] 1 Ch. 187 and *Thomas v. Hamlyn & Co.* [1917] 1 K. B. 527 distinguished. *In re CONDRAN. CONDRAN v. STARK* - - Peterson J. [1917] 1 Ch. 639;
 86 L. J. (Ch.) 464; 117 L. T. 270; [1917] W. N. 137; 33 T. L. R. 307; 61 S. J. 445

EXCESSIVE DAMAGES—County court—New trial—Appeal.
See COUNTY COURT, col. 121.

"EXCESSIVE INTEREST"

See BANKRUPTCY, col. 62.

"EXCLUSIVELY OF ALL OTHER CAUSES"

See INSURANCE (ACCIDENT), col. 201.

EXECUTION—Equitable—County court.

See COUNTY COURT, col. 119.

— Judgment—Emergency legislation.

See EMERGENCY LEGISLATION, col. 159.

— Power of appointment.

See SETTLEMENT, col. 387.

EXECUTOR—Debenture-holder.

See COMPANY, col. 88.

— Director—Liability of.

See COMPANY, col. 90.

Retainer—Testator surety for residuary legatee Amount of liability limited—Mortgage of legatee's share to principal creditor—Bankruptcy of legatee—Valuation of security by principal creditor—Proof for balance—Assets insufficient—Payment of full suretyship liability by executors—Assignment of share by principal creditor—Principal creditor not fully paid—Right to retain executors' payment out of assignee's share.

Appeal from a decision of Astbury J. [1917] W. N. 215.

After the testator's death a legatee of a reversionary share in residue, on whose behalf the testator had given a continuing guarantee fully securing his banking account, but limiting the testator's liability to a specified amount, mortgaged his reversionary share to the bank to secure his account, and subsequently became bankrupt. The bank as principal creditors valued their security and proved for the whole balance of their overdraft, on which they received under 10s. in the pound, and had no chance of obtaining full payment. The executors as sureties were compelled to pay the full

EXECUTOR—*continued.*

amount for which they were liable under the guarantee. The bank, with the concurrence of the legatee's trustee in bankruptcy, subsequently sold the reversionary share to an assignee. On the reversions falling in and the estate becoming divisible the question arose whether the amount paid by the executors under the guarantee ought to be brought into account and retained as against the assignee's share, and this summons was taken out by the executors to determine the point.

Astbury J. *held* that, though the executors' payment was made in their character of sureties, and, the principal creditors being still unsatisfied, the executors had no right of proof for the amount paid by them, they were nevertheless entitled to retain that amount out of the assignee's share.

The assignee appealed.

The C. A. dismissed the appeal. They *held* that the sum paid by the executors under the guarantee never formed part of the bankrupt's estate, and therefore that there was nothing to prevent the executors from claiming that the share to which the bankrupt was entitled as one of the four residuary legatees was a fourth share of the net residue, increased by the amount paid by the executors under the guarantee, and upon the footing that the bankrupt had already received out of his share the sum so paid by the executors.

In re Binns [1896] 2 Ch. 584 overruled. *In re MELTON. MILK v. TOWERS* - - C. A. [1917] W. N. 310; 34 T. L. R. 20

EXECUTORY TRUST.

See HEIRLOOMS, col. 188.

EXEMPTION—Military service.

See ARMY, col. 31.

— Taxation—Canada (British Columbia)—Railway—Lands forming part of railway—Approval of plans—Condition.
See CANADA, col. 70.

EXERCISE—Power of appointment.

See POWER OF APPOINTMENT, col. 307.

EXPENDITURE—Deduction—Income tax.

See REVENUE, col. 357.

"EXPENSES PROPERLY INCURRED"—Bankruptcy.

See BANKRUPTCY, col. 59.

EXPERT EVIDENCE—Foreign marriage.

See CRIMINAL LAW, col. 129, and
 DIVORCE, col. 145.

EXPIRATION—Term—Tenant holding over after.

See LANDLORD AND TENANT, col. 249.

EXPRESS TRUST—Annuity charged on real and personal estate.

See LIMITATIONS (STATUTES OF), col. 254.

EXPULSION—Member—Friendly society.

See FRIENDLY SOCIETY, col. 182.

EXTRAORDINARY AND ABNORMAL PERIL

—Presence of enemy submarines—Hire of tug to tow vessel—Contribution by cargo owners.
See SHIPPING, col. 415.

EXTRAORDINARY RAINFALL—Vis major.

See WATER, col. 454.

EXTRAORDINARY TRAFFIC—Highway—

Motor omnibuses on country roads.
See HIGHWAY, col. 190.

FACTORS—*Goods in custody of agent—Revocation of authority—Subsequent pledge—Title of pledgee—Factors Act, 1889 (52 & 53 Vict. c. 45), s. 2, sub-s. 2.*

A French co. sent to their London agents certain pictures, some being for exhibition only and others being for sale, but they were to remain the property of the French co. until sold. The co. subsequently revoked their agents' authority, and after the revocation one of the agents pledged the pictures to a person who took the pictures in good faith without notice of any fraud:—

Held, that the pledgee obtained a good title to the goods under s. 2, sub-s. 2 of the Factors Act, 1889, as that enactment applied to all goods in the custody of an agent whether they were for sale or not. *MOODY v. FALL MALL DEPOSIT AND FORWARDING CO. SOCIÉTÉ DES GALERIES GEORGES PETIT v. MOODY*

Lord Coleridge J. 33 T. L. R. 306

FALSE IMPRISONMENT—*Misdemeanour—Arrest on suspicion—Charge of being drunk while in charge on highway, of taxi-cab—Honest and reasonable belief in charge—Mistake—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 12.*

Appeal from the verdict and judgment at trial before Bailhache J. and a common jury (33 T. L. R. 298).

The plt. was a taxi-cab driver. The deft. was a sergeant of police. The deft. took the plt. into custody on a charge of being drunk while in charge of a taxi-cab on a highway. The plt. denied that he was drunk, and the magistrates before whom the plt. subsequently appeared dismissed the case. The plt. claimed in this action, *inter alia*, damages for false imprisonment. The jury found that the deft. honestly believed at the time he arrested the plt. that the plt. was drunk. On this finding Bailhache J. entered judgment for the deft.

The plt. appealed.

By s. 12 of the Licensing Act, 1872: "Every person . . . who is drunk while in charge on any highway . . . of any carriage . . . may be apprehended, and shall be liable to a penalty."

The C. A. dismissed the appeal, on the ground that the power to apprehend conferred by s. 12 of the Act of 1872 authorized the apprehension of a person who was honestly and upon reasonable grounds believed to be committing the offence at the time when he was arrested.

TREBROCK v. CROUDACE - C. A. [1917] W. N. 340; 34 T. L. R. 57; 62 S. J. 85

Workman in factory—Hours of employment—

FALSE IMPRISONMENT—continued.

Quitting work before end of day—Gate of factory locked—Refusal of employer to give facilities for leaving factory—Volenti non fit injuria.

Appeal against the decision of the Div. Ct. (Ir.) [1916] 2 I. R. 444.

The C. A. dismissed the appeal. *BURNS v. JOHNSTON* - C. A. (Ir.) [1917] 2 I. R. 137

FALSE STATEMENTS—Notice—Marriage by licence before registrar.

See DIVORCE, col. 146.

FARM—Fence—Repair.

See TRESPASS, col. 442.

FEDERATED MALAY STATES.

See STRAITS SETTLEMENTS, col. 427.

FEE SIMPLE—Equitable estates in.

See SETTLEMENT, col. 388.

FEES—Counsel.

See COSTS, col. 118.

FELONY—Forfeiture.

See FORFEITURE, col. 181.

FENCE—Farm—Repair.

See TRESPASS, col. 442.

FIDUCIARY RELATIONSHIP—Non-disclosure to purchaser of knowledge as to value.
See SOLICITOR, col. 423.

FIELD GENERAL COURT-MARTIAL.

See ARMY, col. 29.

FINAL JUDGMENT—Bankruptcy.

See BANKRUPTCY, col. 62.

FINANCE ACTS.

See COMMISSION, col. 83, REVENUE, col. 353, and WILL, col. 466.

"FINE, PREMIUM, OR OTHER LIKE SUM IN ADDITION TO RENT."

See EMERGENCY LEGISLATION, col. 171.

FINES AND RECOVERIES ACT, 1833.

See TAIL, TENANT IN, col. 429.

FIRE—Goods destroyed by—Contract—Bailment.

See CONTRACT, col. 105.

—Incendiary bombs dropped by enemy aircraft—Insurance.

See LANDLORD AND TENANT, col. 245.

—Insurance.

See INSURANCE (FIRE), col. 202.

FIRES PREVENTION (METROPOLIS) ACT, 1774.

See CONTRACT, col. 105.

FIRM—Enemy—Trading between British and neutral branches of.

See PRIZE COURT, col. 322.

FISHERY—*By-laws—Prohibition of fishing within certain distance of weirs—Validity of by-laws—Ultra vires—Unreasonableness—Evidence of findings by justices.*

FISHERY—*continued*.

Where justices refused to convict for breach of a by-law prohibiting fishing at certain distances above and below a weir on the ground that such by-law was unjust and unreasonable, but did not set out the finding of fact upon which they arrived at this conclusion in the case stated by them for the opinion of the Court:—

Held, that, as *prima facie* the by-law was valid, and there was nothing to show what was the finding of fact by the justices on which they decided the by-law to be unreasonable, the case must be sent back for the justices to convict. **ONIONS v. CLARKE** - Div. Ct.
86 L. J. (K. B.) 740; 116 L. T. 335;
81 J. P. 77

FLOODS—Tort—Damage to property.
See **WATER**, col. 454.

FOOD AND DRUGS—Sale of.
See **ADULTERATION**, col. 4.

"FOR AND ON BEHALF OF"
See **PRINCIPAL AND AGENT**, col. 313.

"FOR THE TIME BEING."
See **ARMY**, col. 32.

FORCE MAJEURE.
See **SALE OF GOODS**, col. 377.

FORECLOSURE—Sale in lieu of.
See **EMERGENCY LEGISLATION**, col. 160.
— Settlement of foreclosed land—Reconversion.
See **CONVERSION**, col. 113.

FOREIGN ENEMY—Loss or damage by—Insurance.
See **LANDLORD AND TENANT**, col. 245.

FOREIGN MARRIAGE—Expert evidence.
See **CRIMINAL LAW**, col. 129, and
DIVORCE, col. 145.

FOREIGN POSSESSIONS—Profits—Income tax.
See **REVENUE**, col. 358.

FOREIGN PRINCIPAL.
See **PRINCIPAL AND AGENT**, col. 313.

FOREIGN SHIP—Ship in British port—Restraint of princes.
See **SHIPPING**, col. 409.

FORFEITURE—*Felony*—Vested interest in personal estate directed to be applied in purchase of land—Conversion—Royal prerogative.

The equitable doctrine of notional conversion of land into money or money into land has no application to the rights of the Crown in cases of forfeiture, escheat, or bona vacantia. It neither increases nor diminishes those rights:—

Held, therefore, that the vested interest of a person convicted of felony before the Act 33 & 34 Vict. c. 23, in personal estate directed to be applied in the purchase of land, was forfeited to the Crown. **TALBOT v. JEVERS** - C. A.
[1917] 2 Ch. 363; 86 L. J. (Ch.) 731;
117 L. T. 430; [1917] W. N. 241

FORFEITURE—*continued*.

— Legacy—Will.
See **WILL**, col. 472.

— Shares.
See **COMPANY**, col. 95.

— Waiver.
See **LANDLORD AND TENANT**, col. 248.

FORTUNE-TELLING.
See **JUSTICES**, col. 240.

FRAUD—Belligerents' rights.
See **PRIZE COURT**, col. 323.

— Contract.
See **PRINCIPAL AND AGENT**, col. 314.

— Separation deed—Rescission.
See **HUSBAND AND WIFE**, col. 193.

FRAUDS, STATUTE OF.
See **SPECIFIC PERFORMANCE**, col. 425.

FREE OF ALL DEATH DUTIES.
See **WILL**, col. 465.

"FREE OF ALL DUTIES."
See **WILL**, col. 462.

"FREE OF DUTY."
See **WILL**, col. 467.

F.O.B. CONTRACT—Principal and agent.
See **PRINCIPAL AND AGENT**, col. 313.

FREIGHT—Shipowners' claims to—Neutral vessels—Contraband cargoes.
See **PRIZE COURT**, col. 323.

FRIENDLY SOCIETY—*Jurisdiction of committee of management—Dispute between member and society—Expulsion—Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 68—Friendly Societies Act, 1908 (8 Edw. 7, c. 32), s. 6.*

Sect. 63 of the Friendly Societies Act, 1896, as amended by s. 6 of the Friendly Societies Act, 1908, provides that every dispute between a member of a friendly society and the society, including any dispute arising on the question whether a member or person aggrieved is entitled to be or to continue to be a member, or to be reinstated as a member, shall be decided in manner directed by the rules of the society, and the decision so given shall be binding and conclusive on all parties without appeal.

While the appellant, who had been for many years the secretary of the respondent society, was away on his military duties a complaint was made against him of having misapplied the society's funds. He denied the allegation, and some correspondence passed between him and his successor in the secretaryship on the subject. Some months later, without giving him any notice of an intention to hold an inquiry, without formulating any charge against him, and without hearing him, the committee of management of the society passed a resolution that the appellant be expelled from the society under r. 3, sub-r. 2, of the rules, which provided that "any officer misapplying the funds shall repay the same and be expelled without prejudice to his liability

FRIENDLY SOCIETY—*continued.*

to prosecution for such misapplication." The rules of the society provided for the decision of disputes by arbitration. The appellant took proceedings against the respondents in the county court for a declaration that the resolution was ultra vires and void and that he was still a member of the society, and for an injunction and damages. The respondents contended that the Court had no jurisdiction to try the action by reason of s. 68 of the Friendly Societies Act, 1896, and s. 6 of the Friendly Societies Act, 1908. The county court judge made a declaration and granted the injunction asked for:—

Held, that if the committee of management in passing the resolution expelling the appellant adjudicated on the question they were guilty of misconduct, and that if they did not adjudicate in the proper sense they acted in direct opposition to the rules which required that the dispute should be left to arbitration, and that in either view therefore the county court judge had jurisdiction to declare the resolution to be a nullity.

Andrews v. Mitchell ([1905] A. C. 78) applied. *WAYMAN v. PERSEVERANCE LODGE OF CAMBRIDGESHIRE ORDER OF UNITED BRETHREN FRIENDLY SOCIETY* - Div. Ct. [1917] 1 K. B. 677; 86 L. J. (K. B.) 243; 116 L. T. 14; [1916] W. N. 406; 33 T. L. R. 90

— Provident fund—Loss of benefit on enlistment.

See MASTER AND SERVANT, col. 273.

FRONTAGER—Road—Notice.

See LOCAL GOVERNMENT, col. 263.

FRUSTRATION—Commercial adventure.

See SHIPPING, col. 401.

FUNERAL EXPENSES—Insurance.

See INSURANCE (LIFE), col. 203.

FURNISHED LODGINGS—Implied warranty as to fitness of tenant.

See LANDLORD AND TENANT, col. 243.

FUTURE ESTATE DUTY—Incidence.

See REVENUE, col. 353.

FUTURITY—Words of—Will.

See WILL, col. 475.

GAMING—*Betting—Automatic machine—Game of skill played for money—Betting Act, 1853 (16 & 17 Vict. c. 119), s. 1.*

The appellant P. was the owner of a machine which was placed in the sweet shop of the appellant B. The machine consisted of a case, in which was the figure of a clown, fixed on a movable base with his hat inverted in his hand. When a penny was placed in the slot of the machine a ball was released from the top of the machine, which rolled down, its course being rendered uncertain by the presence of groups and rows of pins. The player attempted, by manipulating a handle attached to the base on which the clown was fixed, to move the figure so that the ball was caught in the inverted hat. If the player was successful, he obtained a disc entitling him to two pennyworth of sweets.

GAMING—*continued.*

The appellants were convicted of using B.'s shop for the purpose of betting, contrary to s. 1 of the Betting Act, 1853:—

Held, that it was a question of fact for the jury whether the transaction between the appellants and the player at the machine amounted to a receiving by the appellants of money as or for the consideration for a promise to give thereafter a disc entitling the player to two pennyworth of sweets on the event or contingency of the player successfully catching the ball in the clown's hat, and that, as the jury had been properly directed on this question, the convictions must stand. *REX v. PEERS AND BROWN* - C. C. A. 86 L. J. (K. B.) 797; 12 Cr. App. C. 210; 116 L. T. 830; [1917] W. N. 85; 33 T. L. R. 231; 81 J. P. 143

Betting-house—Automatic machine—Game in which prizes are given for success, and in which an entrance fee is required in advance—Case stated—Case remitted to justices for further findings of fact—Duty of justices—Betting Act, 1853 (16 & 17 Vict. c. 119).

The offences aimed at by the Betting Act, 1853 (16 & 17 Vict. c. 119), are offences in relation to betting pure and simple, that is, transactions in which none of the parties has any interest other than the sum or stake he will win or lose.

Where a player is required to pay in advance an entrance fee in order to be allowed to compete in a game in which prizes are offered for success depending upon the individual acts of the players in playing the game, the possibility of winning such prizes or of losing the entrance fee if unsuccessful is not the sole consideration for the player's participation, and the entrance fee so paid is not a deposit "as consideration for an undertaking to give a valuable thing upon a contingency relating to a game" within s. 1 of the Betting Act, 1853 (16 & 17 Vict. c. 119).

Peers v. Caldwell, Taylor v. Caldwell [1916] 1 K. B. 371, and *R. v. Caldwell, R. v. Brown* [1917] W. N. 85, discussed and not followed.

Where on appeal by case stated the Court remits the case to the magistrates to enter continuances, and to find further facts in answer to questions submitted by the Court, the magistrates should give the parties an opportunity of being reheard, and if they so desire, of giving evidence in relation to the acts required to be found. Where the magistrates, without any rehearing or fresh evidence, find in answer to such questions, at a date long after the original hearing, merely from recollection, the Court may decline to act on such findings, and will certainly so decline, where, in so making such findings, the magistrates state that none of the matters on which the further findings were required was raised before them at the original hearing. *FORTE v. M'ALISTER*

Div. Ct. (Ir.) [1917] 2 I. R. 387

GAS—Gasworks—Public Authorities Protection Act.

See LIMITATIONS, STATUTES OF, col. 256.

— Supply—Married woman.

See HUSBAND AND WIFE, col. 194.

GENERAL COMMISSIONERS—Income tax.

See **REVENUE**, col. 358.

GENERAL DAMAGES—Loss of bargain—Contract for sale of real estate.

See **VENDOR AND PURCHASER**, col. 451.

GENERAL LINE OF BUILDINGS—London—

Certificate of superintending architect.
See **LONDON**, col. 265.

GENERAL SHIP—Landing cargo for purpose of re-stowing.

See **SHIPPING**, col. 393.

GEOGRAPHICAL LIMITATION—Trade mark—Registration.

See **TRADE MARK**, col. 433.

GERMAN.

See **ALIEN ENEMY** and **PRIZE COURT**.

GIFT—Substitutional—Will.

See **WILL**, col. 475.

GOODS—Enemy.

See **PRIZE COURT**, col. 324.

— Insurance—Loss.

See **INSURANCE (LOSS)**.

— Prize Court.

See **PRIZE COURT**.

— Sale of.

See **CONTRACT** and **SALE OF GOODS**.

"GOODS" OR "COMMODITIES" — German Government bonds.

See **PRIZE COURT**, col. 324.

GROSS ESTIMATED RENTAL.

See **RATES**, col. 345.

GROUND RENTS — Contract — Construction — Misdescription — Rescission.

See **VENDOR AND PURCHASER**, col. 450.

GUARDIANS—Board of.

See **EDUCATION**.

— Infant son — Appointment of — Soldier's will.

See **PROBATE**, col. 334.

GUEST—Innkeeper—Liability.

See **INNKEEPER**, col. 200.

HABEAS CORPUS — Jurisdiction of inferior Court.

See **ARMY**, col. 42.

HABITUAL CRIMINAL — Evidence—Previous conviction as habitual criminal.

See **CRIMINAL LAW**, col. 130.

HACKNEY CARRIAGE—Refusal of driver to obey direction of person hiring or wishing to hire carriage—Offence by driver—Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), s. 53.

The appellant, who was the driver of a hackney carriage standing on a stand for hackney carriages, was asked by one Baggs, a driver in the employment of a firm of livery stable proprietors who had received an order

HACKNEY CARRIAGE—*continued.*

which they could not execute, to drive his hackney carriage to a certain place within the prescribed distance in the borough of Bournemouth, in order to take a fare to the ry. station. The driver of the hackney carriage, however, refused to go, and the justices found that he had no reasonable excuse for refusing to drive to the place to which he was directed to drive:—

Held, that there was evidence upon which the justices could come to the conclusion that Baggs was the person hiring, or wishing to hire, the appellant's hackney carriage, and that, as the appellant had refused without reasonable excuse to drive to the place to which he was directed by Baggs to drive, he had committed an offence under s. 53 of the Town Police Clauses Act, 1847. **SHEPHERD v. HACK**

Div. Ct. 86 L. J. (K. B.) 1480 ; 15 L. G. R. 597 ; 117 L. T. 154 ; 81 J. P. 210

Register of licences—Person registered as proprietor—Managing director of limited company—Conclusiveness as to registered proprietor being the owner—Metropolitan Public Carriage Act, 1869 (32 & 33 Vict. c. 115), ss. 6, 11—Hackney Carriage Order of December 30, 1907, r. 9.

Application for judgment or new trial.

The action was brought to recover damages for personal injuries caused to the plt. by the alleged negligent driving of a taxi-cab. The deft.'s name and address were entered in the Register of Licences of Hackney Carriages at Scotland Yard in respect of the taxi-cab under the heading "Proprietor," and he was described as the managing director of the Holland Park Taxi Supply Co., Ltd. At the trial before Salter J. with a jury the deft. tendered evidence that he was not the proprietor or part proprietor of the cab, and that his name was only placed on the register as the managing director of the co. The learned judge rejected the evidence upon the ground that the register was conclusive that the deft. was the registered proprietor of the cab and therefore liable for the negligence of the driver. The jury found for the plt. for 175*l.* damages. The deft. appealed.

The C. A. *held* that the register was not conclusive as to the ownership of the cab, and that the evidence was wrongly rejected. New trial ordered. **KEMP v. ELISHA**

C. A. [1917] W. N. 365 ; 62 S. J. 174

HAMMERING—Stock Exchange.

See **BANKRUPTCY**, col. 59.

"HARSH AND UNCONSCIONABLE TRANSACTION."

See **BANKRUPTCY**, col. 62.

HARTER ACT.

See **SHIPPING**, col. 394.

HEIRLOOMS—Money fund—Trust for devolution with entailed estate in Scotland—Proviso against absolute vesting in heirs of entail living at testator's death—Validity—Disentail—Construction of trust—Absolute vesting.

Chattels and a sum of 40,000*l.* were bequeathed by the testator, a domiciled Englishman, upon trust, so far as the rules of law and

HEIRLOOMS—continued.

equity would permit, to allow the chattels to devolve as heirlooms and be enjoyed, and the income of the fund to be received, by the person or persons from time to time in possession or receipt of the rents and profits of the testator's entailed estates in Scotland, but so that the chattels and capital of the fund "should not vest absolutely in any person in the line of entail living at the testator's death but on the death of any such person should devolve"—as to the chattels, "as heirlooms with the estates to the person next in the line of entail," and as to the fund, "with the estates in like manner as if the said sum or investments had been land in Scotland and part of the said estates"—

Held by Peterson J. : (1.) That there was no such absolute gift in the first instance of the chattels or the fund as would render the provision against absolute vesting void for repugnancy; and that neither the first nor the second heir of entail, each of whom was living at the testator's death and succeeded to the estates but died without having disentailed, took an absolute interest in either the heirlooms or the fund, notwithstanding that by Scots law each of them as heir of entail took the whole fee in the entailed estates.

In re Stringer's Estate (1877) 6 Ch. D. 1 and *Shaw v. Ford* (1877) 7 Ch. D. 667 distinguished.

In re Lupton [1905] P. 321 and *In re Viscount Exmouth* (1883) 23 Ch. D. 158 applied.

(2.) That the plt. the third heir of entail, who was also living at the testator's death and had disentailed, was not absolutely entitled to the chattels, inasmuch as the provision that they should devolve "as heirlooms with the estates to the person next in the line of entail" could not be disregarded, but operated to pass the chattels on his death to his successor in the line of entail.

Baroness Wesselenyi v. Jamieson [1907] A. C. 440 applied.

(3.) That, inasmuch as the capital of the fund was to devolve with the estates in like manner as if the fund had been land in Scotland and part of the estates, and as the plt., being entitled under the trust to the income of the fund for life, had by disentailing made himself also the only person who was or could be actually entitled to the Scottish estates under or by virtue of the limitations of the settlement, he was now absolutely entitled in remainder to the capital of the fund.

In re Lord Chesham's Settlement [1909] 2 Ch. 329, *Lord Lilford v. Att.-Gen.* (1867) L. R. 2 H. L. 63, and *In re Trevanion* [1910] 2 Ch. 538 applied.

Hogg v. Jones (1863) 32 Beav. 45 distinguished.

On appeal as to the 40,000l. fund:—

Held, that the plt. on disentailing the Scottish estates became absolutely entitled in possession to the capital of the whole fund.

Decision of Peterson J. on this point [1917] W. N. 114 affirmed. *In re FOWLER. FOWLER v. FOWLER* C. A. [1917] 2 Ch. 307; 86 L. J. (Ch.) 547; 117 L. T. 500

Settlement—Real estate—Will—Construction—Trusts of chattels as heirlooms—"To go and be held" with settled realty—"Upon such trusts

HEIRLOOMS—continued.

as will best correspond with the uses, trusts, and powers" of settled realty—Executory trust—Form of settlement.

By his will a testator bequeathed to trustees certain chattels upon trust "to permit the same to go and be held," so far as the rules of law and equity would admit, with the B. estate, devised by the will of his mother, as heirlooms, for the person or persons who, under the trusts of the same will concerning that estate, should for the time being be entitled thereto, and so that none of the articles should, for the purpose of transmission, vest absolutely in any person who might become tenant in tail male by purchase of the B. estate and should not attain twenty-one.

By a second gift the testator bequeathed to the same trustees certain other chattels commonly used with the mansion-house at B. "upon such trusts, and subject to such powers as, having regard to the nature thereof, and so far as the rules of law and equity will permit, will best correspond with the uses, trusts, and powers" declared and contained of the B. estate, yet so that none of the same chattels should, for the purpose of transmission, vest absolutely in any tenant in tail by purchase of the same estate who should not attain twenty-one.

Under the will of the testator's mother the B. estate was settled, in the events which had happened, upon the testator for life, with remainder to his son P. B. B.-Hope (born in the lifetime of the testator's mother) for his life, with remainder to the use of the first and every other son of P. B. B.-Hope (of whom there were none), with remainder to the use of the first and other sons of the testator born after the death of his mother, in tail male, with remainders over. The testator died in 1837, when P. B. B.-Hope became tenant for life of the B. estate and entitled to a life interest in the heirlooms. In 1899 the B. estate was sold, and also certain of the heirlooms in the second gift, and the proceeds invested. C. T. B.-Hope, another son of the testator, born in 1855, became entitled under the settlement to an estate in tail male by purchase of the B. estate expectant on the death of P. B. B.-Hope without issue male. C. T. B.-Hope attained twenty-one in 1876, but died in 1906, before his estate came into possession, and without having disentailed the proceeds. By his will he left everything he possessed to his wife, the second deft., and appointed her executrix. The first deft., H. T. B.-Hope, was his only son. In May, 1916, P. B. B.-Hope died without issue male, and H. T. B.-Hope became tenant in tail in possession of the estate, and disentailed the proceeds of sale.

Upon an originating summons by the trustees of the testator's will to have it determined to whom the heirlooms went:—

Held, (1.) that the chattels comprised in the first gift came within the general principle established by *Foley v. Burnell* (1783) 1 Bro. C. C. 274, 285; (1785) 4 Bro. P. C. 319, and vested absolutely in the late C. T. B.-Hope as tenant in tail male by purchase who had attained twenty-one, and now belonged to his widow and legal personal representative.

HEIRLOOMS—*continued.*

In re Lord Chesham's Settlement [1909] 2 Ch. 329 distinguished.

But *held*, (2.) that by the gift of the second set of chattels the testator had created an executory trust which must be executed by the Court. The form of the settlement would be as in *Prideaux's Precedents*, 21st ed. vol. ii. p. 971, and as that would exclude any claim on behalf of the estate of C. T. B.-Hope, these chattels, or their proceeds, would devolve on his son, H. T. B.-Hope.

Shelley v. Shelley (1868) L. R. 6 Eq. 540 and *Miles v. Harford* (1879) 12 Ch. D. 691 followed.

In re BERESFORD-HOPE. ALDENHAM v. BERESFORD-HOPE - Eve J. [1917] 1 Ch. 287; 86 L. J. (Ch.) 182; 116 L. T. 79; [1917] W. N. 12

"HELD COVERED" CLAUSE.

See **INSURANCE (MARINE)**, col. 207.

HIGH COURT—Acting in aid of county court—Bankruptcy.

See **BANKRUPTCY**, col. 58.

—Transfer to—Action begun in City of London Court.

See **SHIPPING**, col. 392.

HIGH PEAK MINING CUSTOMS — Small Barmote Court—Jurisdiction.

See **MINES**, col. 277.

HIGH TREASON.

See **CRIMINAL LAW**, col. 133.

HIGHWAY.

Diversion, col. 189.

Extraordinary Traffic, col. 190.

Negligence. See **NEGLIGENCE**.

Obstruction, col. 191.

Repair, col. 192.

Diversion.

Notices specifying date of intended application to Quarter Sessions—Subsequent alteration of date of holding sessions—Validity of notices—Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 85; Schedule, Form 19.

Although the form of notice of intended application to quarter sessions for the diversion of a highway under s. 85 of the Highway Act, 1835 (Form 19 of the schedule to that Act), contains a blank for the insertion of the date on which the application is proposed to be made, it is not necessary to state the date in the notice: it is enough that the notice makes it clear that the application will be made to the quarter sessions held next after the expiration of four weeks from the day on which the justices' certificate is lodged with the clerk of the peace.

A certificate of justices for the diversion of a highway was lodged with the clerk of the peace on May 21. In the notice of intended application to the quarter sessions it was stated that the application would be made on Jul. 4, that being the date on which the summer sessions would in the ordinary course be held. Subsequently, the county assizes having been fixed for Jul. 3, it became necessary to alter the date

C.C.D.

HIGHWAY (Diversion)—*continued.*

of holding the quarter sessions. The justices accordingly altered it to Jun. 20, and on that day the application for enrolment of the certificate was made. The four weeks from the lodging of the certificate with the clerk of the peace expired on Jun. 18:—

Held that, notwithstanding the alteration of the date, the notice was a good notice, and the quarter sessions had jurisdiction to entertain the application. *REX v. DERRY J.J.* - Div. Ct.

[1917] 2 K. B. 302; 86 L. J. (K. B.) 1534; 15 L. G. R. 720; 117 L. T. 538; [1917] W. N. 269; 33 T. L. R. 539; 81 J. P. 292

Extraordinary Traffic.

Excessive weight—Expenses—Public Roads (Ireland) Act, 1911 (1 & 2 Geo. 5, c. 5), s. 82.

Road authorities should have regard to modern requirements, and must make reasonable provision for motor traffic; a natural increase of volume in this mode of carriage, where its character is normal, does not amount to "extraordinary" traffic.

What is "extraordinary" traffic on a post-road, on part of which traction engines are in use, considered:—

Held, that the obligation of county councils to keep public roads in good condition and repair is absolute under s. 82 of the Local Government (Ireland) Act, 1898. *LONDONDERRY C. C. v. MACARTHUR. LONDONDERRY C. C. v. CORMIE Gibson J. (Ir.)* [1917] 2 I. R. 49

Motor omnibuses on country roads—Traffic satisfying a public need—Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 23.

In the summer of 1914 the defendants began to run a service of motor omnibuses between two places a few miles apart for the carriage of passengers. The service was an hourly service from each terminus from 9 A.M. to 9 P.M., and the omnibuses were well filled and served the needs of the district. The road along which the omnibuses ran was in the nature of a country lane, the traffic on which before the advent of the motor omnibuses consisted mainly of light country and agricultural carts. For the year after the service commenced the cost of repairing the road was nearly twice as much as it was before the service commenced. In an action by the local authority under s. 23 of the Highways and Locomotives (Amendment) Act, 1878, to recover the extra cost so incurred as being extraordinary expenses incurred by them by reason of the damage caused by the extraordinary traffic of the motor omnibuses:—

Held, on the facts, that this new traffic on the road was not the slow and normal increase of traffic owing to the development of the district, but was extraordinary traffic within the meaning of s. 23; and that the fact that the motor omnibuses served the requirements of the district did not prevent the traffic from being extraordinary traffic.

Held, also, that in determining whether traffic is or is not extraordinary traffic no distinction in principle can be drawn between the conveyance of persons and the conveyance of goods.

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HIGHWAY (Extraordinary Traffic)—continued.

Judgment of Sankey J. [1916] W. N. 398 affirmed. *ABINGDON R. D. C. v. CITY OF OXFORD ELECTRIC TRAMWAYS, LD.* - C. A. [1917] 2 K. B. 318; 86 L. J. (K. B.) 1247; 15 L. G. R. 446; 117 L. T. 133; [1917] W. N. 152; 81 J. P. 189; 33 T. L. R. 319

Negligence.

— Trees planted in and protected by spiked guards—Personal injury.
See NEGLIGENCE, col. 289.

Obstruction.

Tree fallen across highway—Liability of occupier of land to give warning to passers-by—Highway Act, 1835 (5 & 6 Will. 4, c. 50), ss. 65, 72.

Where a tree, blown down in a violent gale, has fallen across a highway so as to cause an obstruction thereto, the occupier of the land upon which the tree was growing is under no obligation by virtue of either s. 65 or s. 72 of the Highway Act, 1835, to light the tree or to warn persons passing along the highway of the existence of the obstruction. *HUDSON v. BRAY* Div. Ct. [1917] 1 K. B. 520; 86 L. J. (K. B.) 576; 116 L. T. 122; 15 L. G. R. 156; [1916] W. N. 432; 33 T. L. R. 118; 81 J. P. 105; 61 S. J. 234

Wilfully causing in public thoroughfare—Evidence of unreasonable user of highway—Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), s. 28.

By s. 28 of the Town Police Clauses Act, 1847, "every person who . . . by means of any cart, carriage, sledge, truck, or barrow, or any animal, or other means . . . wilfully causes any obstruction in any . . . public thoroughfare," is made liable to a penalty:—

Held, that to constitute the offence of wilfully causing an obstruction within the meaning of the section there must be an unreasonable use of the thoroughfare. It is, however, not necessary that any person should be actually obstructed; it is sufficient if circumstances exist from which justices before whom a charge of wilfully causing an obstruction is brought can conclude that in the ordinary course persons may be obstructed, and that the actual use of the road was calculated to obstruct.

Reg. v. Long (1888) 59 L. T. 33; 52 J. P. 630 (where it appears to have been held that it is necessary to show that some person was actually obstructed) explained by *Avory J.*

Per Shearman J.: *Reg. v. Long* (supra) was impliedly overruled by *Hinde v. Evans* (1906) 70 J. P. 548 and must no longer be considered an authority.

The appellants at 4 p.m. on an afternoon left two vehicles (four-wheeled), each with a horse between the shafts and a chain horse in front, standing unattended for five minutes in a main road 25 yards wide from kerb to kerb with two sets of tram lines down the centre. Any vehicle proceeding in the same direction as that in which the appellants were in the course of travelling would have to draw on the tram lines, and so would obstruct the tram until the vehicle had passed the stationary vehicles of the appel-

HIGHWAY (Obstruction)—continued.

lants or had otherwise crossed over to the wrong side of the road. The horses had just been watered by the ostler of an inn used as a baiting-house, the appellants being found in the inn, where they were having something to eat:—

Held, that there was no evidence of an unreasonable user of the highway, and that the appellants had not wilfully caused an obstruction in the highway within the meaning of the section. *GILL v. CARSON AND NIELD* - Div. Ct. [1917] 2 K. B. 674; 15 L. G. R. 567; 117 L. T. 285; 81 J. P. 250

Repair.

Removal of bank—Alleged damage to adjoining property—Right to remove accumulated road scrapings—Small interest of plaintiff—Vexatious action—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1.

Where road scrapings had been accumulated at the side of the highway so as to form a bank, and the local authority removed part of the bank in order to repair the road surface, and the yearly tenant of an adjoining cottage took proceedings against the local authority for rendering his wall, which adjoined the bank, unsafe, it was *held* that no material support to the wall had been removed; that the local authority had acted within their rights; and the plt. having suffered no material damage, and having no substantial interest in the property, his action was useless and an abuse of process. *WEBSTER v. BAKEWELL R. C.* (No. 2) - *Astbury J.* 86 L. J. (Ch.) 89; 115 L. T. 678

HIRE—Ship.

See SHIPPING, col. 415.

HIRE-PURCHASE AGREEMENT—Lien.

See LIEN, col. 253.

HOLDER—Bills accepted by debtor—Bankruptcy—Examination of witnesses.

See BANKRUPTCY, col. 64.

—Licence.

See LICENSING ACTS, col. 252.

HOLDING OVER—Expiration of term.

See LANDLORD AND TENANT, col. 249.

HOME SECRETARY—Alien—Deportation.

See ALIEN, col. 9.

HORSES—Straying.

See TRESPASS, col. 442.

HOSTILITIES—Insurance against loss through consequences of.

See INSURANCE (MARINE), col. 207.

HOTCHPOT.

See WILL.

"HOUSES"—Rating.

See RATES, col. 345.

HOUSING—Local government.

See LOCAL GOVERNMENT, col. 261.

HUSBAND AND WIFE.

Action, col. 193.

Advancement, col. 193.

HUSBAND AND WIFE—continued.*Contract, col. 194.**Divorce. See DIVORCE.**Married Women's Property Act, col. 195.**Restraint on Anticipation. See MARRIED WOMAN.**Trust, col. 195.**Wife's Torts, col. 195.**Wife's Wearing Apparel, col. 196.***Action.**

Wife against husband—Separation deed—Action for rescission on ground of fraud—Action of tort—Restitutio in integrum—Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 12.

By s. 12 of the Married Women's Property Act, 1882, every woman shall have in her own name against all persons whomsoever, including her husband, the same civil remedies for the protection and security of her own separate property as if such property belonged to her as a feme sole, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort.

In 1910 a deed of separation was executed by a husband and wife under which the husband agreed to pay to the wife during her life or until she should marry again the annual sum of 500*l.*, and the wife agreed to maintain herself and to keep indemnified the husband against her debts and torts, and not to take proceedings for restitution of conjugal rights nor for divorce or judicial separation in respect of any previous marital offence; and it was also agreed that all letters between the parties should be destroyed. The letters were accordingly destroyed and the husband paid his wife the 500*l.* a year. In 1915 the wife brought an action against the husband claiming to have the deed rescinded upon the ground that she had been induced to execute it by his false and fraudulent representations and concealment as to his means:—

Held, that before the Married Women's Property Act, 1882, such a claim was maintainable; that the wife in claiming the relief was not suing her husband for a tort within the meaning of s. 12 of the Act of 1882; and that therefore the Act had not taken away her right to maintain the action.

The Court ordered the deed to be rescinded though the letters had been destroyed and could not be restored to the respective parties, and refused to make it a condition of rescission that the wife should repay to the husband the annual sums of 500*l.* which he had paid to her under the deed, the husband having received corresponding benefits under the deed.

Judgment of Lush J. [1916] 2 K. B. 642 affirmed. *HULTON v. HULTON* - C. A. [1917] 1 K. B. 813; 86 L. J. (K. B.) 633; 116 L. T. 551; [1916] W. N. 49; 33 T. L. R. 197; 61 S. J. 268

Advancement.

Deposit receipt in joint names of husband and wife—Money payable to husband or wife or the survivor—Reservation of power to revoke gift.

A sum of money was placed by a man on deposit receipt in a bank in the names of himself

HUSBAND AND WIFE (Advancement)—contd.

and his wife, but it was payable to him or his wife or the survivor. Shortly before his death he indorsed and handed the deposit receipt to the deft., a clergyman, for charitable purposes, who cashed it forthwith. The plt., widow of the deceased, brought an action against the deft. for a return of the money on the ground, amongst others, that there was a gift of the money to her by way of advancement in the event of her surviving her husband, and that, he having made the gift, was not competent to withdraw it:—

Held, that the deceased gave to himself or his wife the power to withdraw the money, and that this was a reservation of a power to revoke the gift which he was entitled to make, and that the action could not be maintained. *M'DOWELL v. M'NEILLY* - O'Connor M.R. [1917] 1 I. R. 117

Mortgage money belonging to them on a joint account—Equal contribution—Wife's moiety part of her separate estate—Half of interest paid by husband to wife—Death of husband—Survivorship as to beneficial interest.

A husband and his wife advanced sums on mortgages, expressed to be out of moneys belonging to them on a joint account. There was clear evidence that half of the respective loans belonged to the separate estate of the wife. The mortgage interest was during the husband's life collected and paid to him, and he paid a half of the sums so received to her.

The husband died leaving his wife surviving:—

Held, that the presumption in favour of advancement was not rebutted, and that the widow was entitled to the mortgages by survivorship. *In re HICKS. HICKS v. HICKS* Eve J. 117 L. T. 360

Contract.

Supply of gas to house occupied by woman after death of husband—Woman marrying again and occupying same house—Non-disclosure of second marriage to gas company—Liability of wife for gas supplied subsequent to marriage.

The respondent, after the death of her first husband, continued to reside in the same house as before, and took from, and paid the appellants for, a supply of gas, the accounts being made out in her widowed name. She married again, and her second husband then became the tenant and occupier of the house in which she had been living during her widowhood, but the fact of her remarriage was not made known to the appellants, who continued to supply gas to the house. The respondent paid one quarter's account for gas after her remarriage, but, not having paid the account for a later quarter, the appellants took proceedings against her to recover the amount:—

Held, that there was a contract by the respondent to pay for the gas supplied to the house until she gave the appellants notice to discontinue the supply or gave them notice of her marriage, and that as she had done neither she was liable for the amount. *LEA BRIDGE DISTRICT GAS CO. v. MALVERN* - Div. Ct.

[1917] 1 K. B. 803; 86 L. J. (K. B.) 553; 116 L. T. 311; 15 L. G. R. 412; [1917] W. N. 29; 81 J. P. 141

HUSBAND AND WIFE—continued.**Divorce.**

See DIVORCE, col. 141.

Married Women's Property Act.

Disputes as to property—Originating summons under s. 17 of Married Women's Property Act, 1882 (45 & 46 Vict. c. 75)—Reference by judge to official referee for trial—Jurisdiction—Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 14.

The Court has no jurisdiction under s. 17 of the Married Women's Property Act, 1882, to refer the whole subject-matter of an originating summons taken out under that section to an official referee for trial.

Quære, whether, having regard to the special and peculiar jurisdiction conferred by s. 17 of the Act of 1882, the Court has jurisdiction to refer a matter arising under that section to an official referee for trial under s. 14 of the Arbitration Act, 1889. *In re MARRIED WOMEN'S PROPERTY ACT, 1882. In re W. A. HUMPHREY AND H. A. HUMPHREY - C. A. [1917] 2 K. B. 72; 86 L. J. (K. B.) 775; 117 L. T. 7; [1917] W. N. 128; 61 S. J. 382*

Restraint on Anticipation.

See MARRIED WOMAN, col. 271.

Trust.

Purchase of property by husband in wife's name—Intention to defeat creditors—Presumption of gift to wife—Rebuttal of.

Appeal from Kingston County Court.

The action was by a husband against his wife for a declaration that she was trustee for him of a certain house and land. The plt. while living with the deft. took a lease of certain land in her name, and built a house on it with his own money. He was at that time in debt to money-lenders, and with his wife's knowledge and connivance he put her forward as the lessee, with the object of protecting the property from his creditors. The plt. and deft. subsequently separated, and on her refusal to reassign the lease to him he brought the action. The deft. had never entered into any agreement to hold the property as trustee for the plt. and claimed that having regard to the fact that the relationship between them was that of a husband and wife the presumption was that the conveyance was intended as a gift to her. The only fact relied on by the plt. as tending to rebut that presumption was that of the above-mentioned scheme to defeat his creditors. The county court judge made the declaration asked for. The deft. appealed.

The Div. Ct. *held* that the plt., on a claim by him for the equitable relief of a declaration of trust, could not be allowed to set up his own fraudulent design, and that the deft. was entitled to retain the property for her own use, notwithstanding that she was a party to the fraud. *GASCOIGNE v. GASCOIGNE - Div. Ct. [1917] W. N. 389*

Wife's Torts.

Master and servant—Employment by wife—

HUSBAND AND WIFE (Wife's Torts)—contd.

Dangerous premises—Tort arising out of contract—Liability of husband.

A chauffeur employed by a married woman in and about her garage was injured in the course of his employment through the defective condition of the garage. He brought an action against the married woman and her husband for an alleged tort committed by the former:—

Held, that the tort (if any) arose out of the contract of employment and that the husband was not liable.

Liverpool Adelphi Loan Association v. Fairhurst (1854) 9 Ex. 422 and Earle v. Kingscote [1900] 2 Ch. 585 followed. COLE v. DE TRAFFORD AND WIFE - Div. Ct. [1917] 1 K. B. 911; 86 L. J. (K. B.) 764; 117 L. T. 224; 33 T. L. R. 249; 61 S. J. 354

Wife's Wearing Apparel.

Judgment against wife—Agreement that all wearing apparel worn by wife shall be husband's absolute property—Validity of agreement.

A husband is bound to provide his wife with her necessary apparel, but he is not bound to give it to her. He can make the provision either by giving it to her in accordance with the common practice, or by sending it to her. Therefore an agreement between the husband and wife that all articles of wearing apparel used or worn by the wife are to be purchased by the husband in his own name and on his credit and are to be his absolute property, his wife having no right or title to them, except to wear them during his pleasure, is valid and enforceable as against judgment creditors of the wife. *RONDEAU, LEGRAND & Co v. MARKS. LOUIS MARKS, CLAIMANT - Bailhache J. [1917] 2 K. B. 636; [1917] W. N. 268; 83 T. L. R. 529; 61 S. J. 667*

Affirmed on appeal. *C. A. [1917] W. N. 298; 84 T. L. R. 8; 62 S. J. 24*

ILLEGAL DISTRESS—Action against justice for.

See JUSTICES, col. 238.

ILLEGALITY—Contract.

See CONTRACT, col. 107, and PRINCIPAL AND AGENT, col. 314.

IMPERFECT GIFT.

See SETTLEMENT (PROPERTY), col. 389, and WILL, col. 462.

IMPLICATION—Estate by.

See WILL, col. 471.

IMPLIED TERM—Sale of goods.

See CONTRACT, col. 107.

IMPOSSIBILITY—Contract.

See CONTRACT, col. 108.

IMPROVEMENTS—Irish estates—Principal mansion-house—Appointment of trustees.

See SETTLED LAND, col. 384.

IN CAMERA—Court-martial.

See ARMY, col. 29.

IN REM—Action—Maritime lien.
See **SHIPPING**, col. 415.

INCAPACITY—Accident.
See **WORKMEN'S COMPENSATION**, col. 499.

INCOME—Capital or.
See **CAPITAL OR INCOME**, col. 76.
— Mortgaged property—Payment of to mortgagor.
See **MORTGAGE**, col. 282.
— Trust legacy—Maintenance of wife and children.
See **WILL**, col. 473.

INCOME TAX.
See **REVENUE**, col. 357, and **WILL**, col. 462.

INCORPORATION — Certificate of — Company.
See **COMPANY**, col. 92.

INCREASE—Rateable value.
See **RATES**, col. 345.

INCREASE OF RENT AND MORTGAGE INTEREST (WAR RESTRICTIONS) ACT, 1915.
See **EMERGENCY LEGISLATION**, col. 170.

INCUMBENT—Inhibition—Appeal.
See **ECCLESIASTICAL LAW**, col. 151.

INDECENT ASSAULT — Evidence—Complaint by prosecutrix.
See **CRIMINAL LAW**, col. 131.

INDEMNITY—Damage—Principal and agent — Lien—Colliery—Subsidence—Equitable lien—Possible future claims.
See **PRINCIPAL AND AGENT**, col. 314.

Implied request by shipowners to charterers to unload cargo—Accident happening to charterers' servant while unloading—Compensation paid by charterers to workman's dependants—Implied undertaking by shipowners to indemnify—Liability of shipowners.

The plts., who were the charterers of a ship from the defts., the shipowners, gratuitously removed some hatch beams on behalf of and at the implied request of the shipowners. While the beams were being removed by the plts.' servants, one of the plts.' servants engaged in the work was accidentally killed. The plts. paid to his dependants compensation in accordance with the Workmen's Compensation Act, 1906. The plts. claimed to recover the sum paid as compensation from the defts. on the ground that the defts. had impliedly undertaken to indemnify the plts. for loss or damage occasioned by the discharge of the cargo :—

Held, that there was no evidence of an implied undertaking by the defts. to indemnify the plts. The accident was not the direct or natural consequence of doing the discharging of the cargo, but was a consequence of the manner in which the discharging was done.

The proposition of Tindal C.J. in *Tophis v. Grane*, 5 Bing. N. C. 636, cited by Brett J. in

INDEMNITY—*continued*.
Dugdale v. Lovering (1875 L. R. 10 C. P. at p. 200, considered.
Decision of Ridley J. reversed. *Cory (William) & Sons, Ltd. v. Lambton and Hetton Collieries, Ltd.* - C. A. 115 L. T. 738 ; 86 L. J. (K. B.) 401 ; 10 B. W. C. C. 180

INDEPENDENT CONTRACTOR—Negligence.
See **INNKEEPER**, col. 200.

INDICTMENT — Common nuisance — Canada (criminal law).
See **CANADA**, col. 71.

INDUSTRIAL AND PROVIDENT SOCIETIES
— *Application by co-operative society before registration—Continuing offer—Acceptance by society after registration—Civil bill appeal—Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39).*

An application for shares made to the promoters of an unregistered co-operative society is a continuing offer, which may, if not revoked, be accepted by the society, when registered under the Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39); and the promoters are the agents of the applicant to communicate the offer to the society when so registered. *BRIDGETOWN CO-OPERATIVE SOCIETY v. WHELAN*
Ross J. [1917] 2 I. R. 39

Disputes between society and members—Rules—Arbitration—Rules alleged to be ultra vires—Stay of proceedings—Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39), s. 49.

The rules of an industrial and provident society provided for the reference of all disputes between the society and its members to the Irish Agricultural Organization Society.

A member of the society commenced an action against the society for a declaration that certain new rules adopted by the society were ultra vires the society, and not binding upon him, and for consequential relief :—

Held, that the plt.'s claim was not a dispute within the arbitration rule and s. 49 of the Industrial and Provident Societies Act, 1893, and that the deft. society's motion to stay proceedings in the action ought accordingly to be refused. *M'ELLISTRIM v. BALLYMACCELLIGOTT CO-OPERATIVE AGRICULTURAL AND DAIRY SOCIETY, LD.* - C. A. (Ir.) [1917] 1 I. R. 93

INFANT—*Apprenticeship deed—Rise in prices—Insufficiency of agreed wages to cover cost of living—Enforceability of deed.*

Case stated by justices of St. Albans.

By a deed of apprenticeship dated Aug. 22, 1916, the respondent, Florence Harrison, a girl aged fourteen, with the consent of her father, John Harrison, bound herself apprentice to the appellant, Sidney Dillingham, for the term of four years to learn the trade of straw-hat-making. By the deed the appellant covenanted to teach the girl her trade and to pay her 5s. a week wages for the first year, 6s. for the second year, 7s. 6d. for the third, and 10s. for the fourth. The girl entered upon the employment as such apprentice, working at the appellant's factory in the daytime and living

INFANT—*continued*.

at home. In Mar., 1917, owing to the rise in the cost of living, her father found that he could not support her upon the wages that she was receiving from the appellant, and she left her employment and went into domestic service with another person at a wage of 5s. a week and her keep. The appellant thereupon took out a summons against the girl and her father to enforce the provisions of the apprenticeship deed. The justices, having regard to the abnormal conditions prevailing in Aug., 1916, when the deed was executed, declined to enforce the provisions of the deed, on the ground that those provisions were not reasonable or for the benefit of the infant. There was no evidence that the wages stipulated for in the deed were not the current rate payable to an apprentice coming fresh from school to be taught her trade.

The Div. Ct. *held* that the rise in the cost of living and the consequent increased burden upon the father did not make the apprenticeship deed cease to be for the benefit of the infant so as to be unenforceable. They accordingly remitted the case to the magistrates to enforce the deed. **DILLINGHAM v. HARRISON**

Div. Ct. [1917] W. N. 305

— Legatee — Will — Legacy — Forfeiture if legatee a Roman Catholic.

See **WILL**, col. 472.

Maintenance and advancement—Reversionary interest—Sum advanced charged on corpus—Form of order.

Where an infant's sole property was a sum of 2500*l.* payable on the death of his father, the Court made an order charging a sum required for his present maintenance and advancement with interest at 6 per cent. on the principal sum, and providing that the sum to be advanced and interest thereon should be repaid only when the principal sum became payable. *In re* **MORGAN**. **MORGAN v. MORGAN**

O'Connor M.R. (Ir.) [1917] 1 I. R. 181

INFECTION—Doctrine of.

See **PRIZE COURT**, col. 327.

— Sprained wrist—Latent tuberculosis.

See **INSURANCE (ACCIDENT)**, col. 201.

INFERIOR COURT — Jurisdiction — Habeas corpus.

See **ARMY**, col. 42.

INHIBITION — Incumbent — Appointment of curate by bishop of diocese—Appeal.

See **ECCLESIASTICAL LAW**, col. 151.

INJUNCTION—County court—Costs.

See **COUNTY COURT**, col. 120.

Interference by—Company—Internal management.

The directors and staff of a co. were asked to take less than their full salaries during the war and they did so, but it was not clear whether they permanently gave up the difference or whether their claims were only in abeyance. The directors afterwards resolved to issue debentures to themselves and the staff in respect of

INJUNCTION—*continued*.

the arrears, and some of the shareholders brought an action against the co. the directors, and the other shareholders, and asked for an interlocutory injunction restraining the resolution from being acted on:—

Held, that as the matter was carried through by the votes of two of the directors, who would themselves benefit, but whose claims were not admitted by the co., the plts. were entitled to an order granting an injunction till the trial, but the defts. should have leave to move to dissolve the injunction in the event of the scheme proposed by the directors being confirmed by the co. **LAWSON AND ANOTHER v. FINANCIAL NEWS, LD.** - - - C. A. 34 T. L. R. 52

— Trade name.

See **TRADE NAME**, col. 440.

INNKEEPER — *Liability — Guest — Personal injuries—Fitness of premises—Negligence of independent contractor.*

By reason of the contractual relationship existing between an innkeeper and a guest in the inn there is an implied warranty by the innkeeper that the inn premises are, for the purpose of personal use by the guest, as safe as reasonable care and skill on the part of any one can make them, but the innkeeper is not responsible for defects which could not have been discovered by reasonable care or skill on the part of any person concerned with the construction, alteration, repair, or maintenance of the premises.

Francis v. Cockrell (1870) L. R. 5 Q. B. 501 followed and applied; **Indermaur v. Dames** (1866) L. R. 1 C. P. 274; (1867) 2 C. P. 311 distinguished. **MACLENNAN v. SEGAR**

McCardie J. [1917] 2 K. B. 325; 117 L. T. 376; 33 T. L. R. 351

INNOCENT MISREPRESENTATION.

See **VENDOR AND PURCHASER**, col. 448.

INSOLVENT COMPANY—Debentures.

See **COMPANY**, col. 87.

INSPECTOR—Food and drugs.

See **ADULTERATION**, col. 5.

INSTALMENTS—Contract for sale and delivery by—Sale of goods.

See **SALE OF GOODS**, col. 377.

INSTITUTE CARGO CLAUSES.

See **INSURANCE (MARINE)**, col. 207.

INSURABLE INTEREST.

See **INSURANCE (LIFE)**, col. 203.

INSURANCE—ACCIDENT, col. 201.

— — **BURGLARY**, col. 201.

— — **FIRE**, col. 202.

— — **FUNERAL EXPENSES.** See * **INSURANCE (LIFE)**.

— — **LIFE**, col. 202.

— — **LOSS OR DAMAGE**, col. 204.

— — **MARINE**, col. 206.

— — **NATIONAL (HEALTH)**, col. 213.

— — **WAR.** See **INSURANCE (MARINE)**.

INSURANCE (ACCIDENT)—Employer insured—Both insurance company and employer in liquidation.
See **WORKMEN'S COMPENSATION**, col. 516.

Sprained wrist—*Latent tuberculosis*—*Infection*—*Total disablement*—“*Exclusively of all other causes*”—*Ontario*—*Appeal from*.

The appellants insured the respondent against bodily injury sustained through accidental means and resulting “directly, independently and exclusively of all other causes” in total disablement from performing the duties of his occupation. A statement by the respondent that he was in sound condition mentally and physically was made a warranty by the policy. After the issue of the policy the respondent by accidental means severely sprained his wrist. The appellants for seven quarters paid him the amount provided in the policy for total disablement but then declined to make further payments. The respondent, being still disabled, sued upon the policy. It appeared that about ten or fifteen years before the date of the policy the respondent had suffered from a tubercular affection of a small part of his left lung, which had caused a lesion which had then healed. There were concurrent findings that at that date there was no active tuberculosis in respondent's arm, but that there was in his system tuberculosis which was latent and would have remained harmless had it not been for the accident, and that apart from tubercular infection the wrist would have recovered within six months of the accident:—

Held, that there was no breach of warranty, that the disablement resulted “directly, independently and exclusively of all other causes” from the accident, and that the respondent was entitled to recover under the policy. **FIDELITY AND CASUALTY CO. OF NEW YORK v. MITCHELL** - J. C. [1917] A. C. 592; 86 L. J. (P. C.) 204; 117 L. T. 494; [1917] W. N. 273

INSURANCE (BURGLARY)—*Statement forming basis of contract*—*Arbitration clause*—*Difference arising out of policy*—*Truth of statement*—*Validity of policy*—*Burden of proof*.

A policy of insurance contained a clause referring to the decision of an arbitrator “all difference arising out of this policy.” It also contained a recital that the assured had made a proposal and declaration as the basis of the contract, and a clause to the effect that compliance with the conditions indorsed upon the policy should be a condition precedent to any liability on the part of the insurers. One of the conditions provided that if any false declaration should be made or used in support of a claim all benefit under the policy should be forfeited.

In answer to a claim by the assured the insurers alleged that statements in the proposal and declaration were false:—

Held, that the truth or untruth of the statements was a matter referred to the arbitrator.

Held, also, that the burden of proving that the statements were untrue lay upon the insurers. **STEBBING v. LIVERPOOL AND LONDON AND GLOBE INSURANCE CO.** - Div. Ct. [1917] 2 K. B. 433; 86 L. J. (K. B.) 1155; 117 L. T. 247; 33 T. L. R. 395

INSURANCE (FIRE).

Enemy Airship, col. 202.

Landlord and Tenant. See **LANDLORD AND TENANT**.

Enemy Airship.

Fire caused by—Exception—“*Loss resulting from military power*.”

Damage by fire caused by a bomb from an enemy Zeppelin is within the exception in a policy of fire insurance of damage “resulting from insurrection, riots, civil commotion, or military or usurped power.” **ROGERS v. WHITTAKER** - Sankey J. [1917] 1 K. B. 942; 86 L. J. (K. B.) 790; [1917] W. C. & Ins. Rep. 196; 116 L. T. 249; 33 T. L. R. 270; [1917] W. N. 123

Landlord and Tenant.

—*Covenant to insure against “loss or damage by fire.”*
See **LANDLORD AND TENANT**, col. 245.

INSURANCE (FUNERAL EXPENSES).

See **INSURANCE (LIFE)**, col. 203.

INSURANCE (LIFE).

Alien Enemy. See **ALIEN ENEMY**.

Company. See **COMPANY—WINDING UP**.

Compulsory Military Service, col. 202.

Concealment, col. 203.

Funeral Expenses, col. 203.

Insurable Interest. See above, **Funeral Expenses**.

Policy—

Assignment, col. 204.

Property in, col. 204.

Waiver. See above, **Concealment**.

Alien Enemy.

See **ALIEN ENEMY**, col. 13.

Company.

See **COMPANY—WINDING UP**, col. 100.

Compulsory Military Service.

Extra premium—Public policy.

The plt. took out with the deft. co. a life insurance policy providing that if he should engage in military service except in Great Britain or Ireland without the licence of the directors the policy should be void, but that if, not having volunteered, he should be legally compelled to serve such service should be covered without extra premium. The plt., who was thirty-seven years of age, afterwards attested under Lord Derby's scheme, but he obtained an exemption which was still subsisting:—

Held, that the above provisions were not contrary to public policy. **DUCKWORTH v. SCOTTISH WIDOWS' FUND LIFE ASSURANCE SOCIETY** - Coleridge J. 33 T. L. R. 430

INSURANCE (LIFE)—continued.**Concealment.**

Material fact—Subsequent receipt of premiums—Waiver—Principal and agent—Knowledge of agent imputed to principal.

The plt. was the executrix of a man who had insured his life with the deft. co. The proposal form stated that the omission or concealment of material facts would render the policy void. The insured stated on the proposal form that he was a fisherman, whereas in fact he was also a member of the Royal Naval Reserve, and at the time of the proposal had been called up for service and expected to go mine-sweeping. The defts.' agent, who according to the policy was the agent of the proposer, knew at the time of the proposal that the insured expected to go mine-sweeping, and after the issue of the policy he so informed the defts.' district manager, and the defts. subsequently accepted premiums. While waiting to go mine-sweeping the insured disappeared, and it was supposed that he had fallen overboard. In an action by the executrix of the insured to recover the amount due on the policy:—

Held, that the information given to the defts.' district manager must be treated as having been given to their head office, and as any objection that might have been taken was waived by the subsequent receipt of the premiums the plt. was entitled to recover. *AYREY v. BRITISH LEGAL AND UNITED PROVIDENT ASSURANCE CO.* - Div. Ct. [1917] W. N. 359; 34 T. L. R. 111

Funeral Expenses.

Tombstone—Insurable interest—Recovery of premiums—Misstatement of fact—Assurance Companies Act, 1909 (9 Edw. 7, c. 49), s. 36, sub-s. 1.

By s. 36, sub-s. 1, of the Assurance Companies Act, 1909, among the purposes for which collecting societies may issue policies of assurance there is included insuring money to be paid for the funeral expenses of a parent:—

Held, that the funeral expenses must be reasonable, regard being had to all the circumstances of the case in question.

The plt. effected an insurance with the defts. on the life of his mother for the purpose of providing money to be paid for her funeral expenses. Among the funeral expenses which he alleged he had incurred was a sum of 16*l.* 8*s.* 9*d.* for a tombstone. Part of these expenses having been paid by other societies, he claimed the balance of 14*l.* 16*s.* from the defts.:—

Held, that funeral expenses could not be taken, as matter of law, to exclude the cost of a tombstone, and that whether in a particular case they properly included such an item was a question of fact.

The plt. alternatively claimed a return of the premiums paid on the policy:—

Held, that there were no circumstances entitling him to recover them.

Harse v. Pearl Life Assurance Co. [1904] 1 K. B. 558 followed. *GOLDSTEIN v. SALVATION ARMY ASSURANCE SOCIETY* - Div. Ct. [1917] 2 K. B. 291; 86 L. J. (K. B.) 793; [1917] W. C. & Ins. Rep. 192; 117 L. T. 63

INSURANCE (LIFE)—continued.**Insurable Interest.**

See above, Funeral Expenses, col. 203.

Policy.**Assignment.**

No consideration—Assignment conditional on assignor predeceasing assignee—Validity.

The owner of a life policy gave it to his housekeeper with the following signed indorsement, namely: "I authorise"—naming her—"my housekeeper and no other person to draw this insurance in the event of my predeceasing her this being my sole desire and intention at time of taking this policy out and this is my signature." The assignor paid the premiums until his death:—

Held by Astbury J. and the C. A., that the assignment was inoperative; by Astbury J. (115 L. T. 186; [1916] W. N. 250) on the ground that the assignment contained no present words of gift and being (a) without consideration and (b) conditional it did not pass the chose in action (a) under the Policies of Assurance Act, 1867, ss. 1, 5, schedule, or (b) under the Supreme Court of Judicature Act, 1873, s. 25, sub-s. 6; by the C. A. on the ground that the assignment was an incomplete gift, being either (1.) a revocable mandate or authority which was revoked by the death of the assignor, or (2.), if taking effect on the death, a testamentary document not duly executed. *In re WILLIAMS. WILLIAMS v. BALL* C. A. [1917] 1 Ch. 1; 86 L. J. (Ch.) 36; 115 L. T. 689; 61 S. J. 42

Property in.

Policy taken out and premiums paid in the name of another—Resulting trust.

A policy of insurance was taken out by L. in the name of and on the life of J. L. paid the premiums, and retained possession of the policy, and dealt with it as his own property, J. never making any claim thereto. J. afterwards was adjudicated a bankrupt, and subsequently died:—

Held, that the policy moneys were payable to L., and not to J.'s assignees in bankruptcy. *In re SLATTERY* - Fim J. [1917] 2 I. R. 278

Waiver.

See above, Concealment, col. 203.

INSURANCE (LOSS OR DAMAGE).**Indemnity, col. 204.**

Loss. See below, War, Outbreak of.

Theft or Dishonesty, col. 205.

War, Outbreak of, col. 205.

Indemnity.

Policy—Valued policy or indemnity.

The plt. engaged Miss Ellen Terry to deliver fifty lectures in Australia and New Zealand in 1914, and took out a Lloyd's policy of insurance by which the underwriters agreed to pay the plt. 100*l.* "for each and every performance and/or lecture in the United Kingdom and/or Australia and/or New Zealand [from] which Miss

INSURANCE (LOSS OR DAMAGE) (Indemnity)
—continued.

Ellen Terry is absent owing to illness and/or accident (ex death), but no liability to attach hereto in respect of the first fifteen performances and/or lectures from which Miss Ellen Terry is absent," and the underwriters bound themselves to pay "all such loss as above stated not exceeding the sum of 100*l.* for each performance missed and not exceeding 1500*l.* in all that the assured may sustain" during the period in question. The policy warranted that Miss Terry was only to be paid for actual performances:—

Held, that the policy was not a valued policy, but a policy of indemnity.

Decision of Sankey J. (33 T. L. R. 51) affirmed. *BLASCHECK v. BUSSELL* - - C. A.
33 T. L. R. 74

Loss.

See below, War, Outbreak of, col. 205.

Theft or Dishonesty.

Servant—Exceptions—Burden of proof—Evidence.

By a policy of insurance underwriters insured the assured, a jeweller, against loss of or damage to jewellery arising from any cause whatsoever save and except breakage and save and except loss by theft or dishonesty of any servant in the exclusive employment of the assured.

In an action upon the policy by the assured against one of the underwriters the evidence established a loss by theft and tended to implicate in the theft a servant in the exclusive employment of the plt. :—

Held, that it was incumbent on the plt. to prove a theft by some person other than a servant in his exclusive employment and that, as he had failed to do this, he could not recover.

Held, also, that, assuming the burden of proving a theft by the plt.'s servant to lie on the deft., he might establish such a theft by evidence which possibly might not be admitted or sufficient to convict in a criminal prosecution; and that evidence that two days before the theft the servant was seen in conference with three notorious thieves was admissible to prove his complicity; but that evidence of his bad character was not admissible. *HURST v. EVANS*

Lush J. [1917] 1 K. B. 352; 86 L. J. (K. B.) 305; [1917] W. C. & Ins. Rep. 31; 116 L. T. 252; [1916] W. N. 419; 33 T. L. R. 96

War, Outbreak of.

Goods consigned abroad on sale or return—Outbreak of war—Detention in enemy country—Loss.

Appeal from a decision of the C. A. [1917] 1 K. B. 458, reversing a decision of Rowlatt J. [1916] 1 K. B. 479.

The plts. (appellants), who carried on business in London as dealers in jewellery, insured their stock of jewellery at Lloyd's by a non-marine policy for a year between Jan. 8, 1914, and Jan. 7, 1915, against "loss of damage or misfortune to the before-mentioned property or any part thereof arising from any cause whatsoever" whilst the goods were in the United Kingdom or any country in Europe

INSURANCE (LOSS OR DAMAGE) (War, Outbreak of)—continued.

(with certain exceptions), and in transit from any port in the United Kingdom or Europe to any other port in the United Kingdom or Europe. Between Jun. 16 and Jul. 22, 1914, the plts. consigned certain pearls so insured to trade customers in Frankfort-on-Main and Brussels, on sale or return, on the terms that the pearls remained the property of the plts. until invoiced by them. In the ordinary course of business jewellery so sent on approval remains with the consignee for a limited period to give him an opportunity of selling it. By reason of the outbreak of war between Great Britain and Germany on Aug. 4, and the occupation of Brussels by the Germans on Aug. 20, 1914, it became impossible for the plts. to recover possession of the pearls. There was no evidence that the pearls had been seized or specifically interfered with by the German authorities. As to the pearls sent to Frankfort there was no evidence that they had not remained in the possession of the consignees; and as to the pearls sent to Brussels the consignees had, with the subsequent assent of the plts., placed them in a bank there for safe custody, and there was no evidence that they had not remained in the bank.

The C. A., reversing the decision of Rowlatt J., held that, in the absence of any evidence that the goods had not been carefully preserved since the commencement of the war, with the intention of returning them to the appellants when communication should be restored, the appellants had failed to prove a loss under the policy.

The H. L. dismissed the appeal. *MOORE v. EVANS* - - H. L. (E.) [1917] W. N. 319; 34 T. L. R. 51; 62 S. J. 69

INSURANCE (MARINE).

Abandonment, col. 207.

Deviation. See below, "Held Covered" Clause.

Freight. See below, War Risks.

"Held Covered" Clause, col. 207.

Hostilities, col. 207.

Motor Car. See above, "Held Covered" Clause.

Stoppage of Machinery, col. 208.

Suing and Labouring Clause. See below, War Risks.

Total Loss. See below, War Risks.

Unseaworthiness, col. 209.

War Risks—

Cause of Loss, col. 209.

Extinction of Light, col. 211.

Freight, col. 211.

Suing and Labouring Clause, col. 212.

War Region, col. 212.

Warranty, col. 212.

INSURANCE (MARINE)—continued.**Abandonment.**

See below, "Held Covered" Clause, col. 207, and War Risks—Freight, col. 211.

Deviation.

See below, "Held Covered" Clause, col. 207.

Freight.

See below, War Risks, col. 211.

"Held Covered" Clause.

Deviation—Abandonment—Notice to underwriters within reasonable time.

THAMES AND MERSEY MARINE INSURANCE CO. v. H. T. VAN LAUN & CO. - H. L. (E.) [1917] 2 K. B. 48, n.; 86 L. J. (K. B.) 840, n.: 116 L. T. 368

Motor car carried on deck—Error in description of interest—Notice to underwriters within reasonable time—Institute Cargo Clauses, No. 4.

By a policy of marine insurance, dated Nov. 13, 1914, in the ordinary Lloyd's form, a motor car was insured against the usual perils on a voyage from London to Messina, the insurance being described as "500*l.* on motor car and accessories (in case) so valued." The Institute Cargo Clauses were attached, clause 4 of which was as follows: "Held covered, at a premium to be arranged, in case of deviation or change of voyage or of any omission or error in the description of the interest, vessel, or voyage." By the terms of the bill of lading, dated Dec. 8, under which the car was shipped, the shipowners were authorized to carry it on deck at shipper's risk, and it was carried on deck accordingly. There was no evidence of any usage authorizing the car to be carried on deck within r. 17 of the Rules for Construction of Policy in Sched. I. to the Marine Insurance Act, 1906. The ship sailed on Jan. 8, 1915, and on arrival at Messina the car was found to be so damaged by the sea as to be valueless. No notice that the car was shipped on deck was given to the underwriters until after the loss. There was evidence that many underwriters would refuse to insure at any premium a car carried on deck against all risks, and that those who would be willing to insure it would require an unusually high premium:—

Held, upon the authority of *Thames and Mersey Marine Insurance Co. v. Van Laun* [1917] 2 K. B. 48, n., that clause 4 of the Institute Cargo Clauses did not protect the assured, as it was an implied term that notice should be given to the underwriters within a reasonable time after the assured knew that the car was being carried on deck; that such notice was not given; and that therefore the risk was not covered by the policy.

Judgment of Rowlatt J. [1916] 2 K. B. 395 affirmed on different grounds. *HOOD v. WEST END MOTOR CAR PACKING CO.* - C. A. [1917] 2 K. B. 38; 86 L. J. (K. B.) 831; 116 L. T. 365; [1917] W. N. 37; 61 S. J. 252

Hostilities.

Proximate cause of loss—Perils of the sea—"Warranted free from all consequences of hos-

INSURANCE (MARINE) (Hostilities)—contd.

ilities"—*Ship torpedoed by enemy—Ship brought into harbour—Subsequent loss through sinking.*

A ship was insured with the defts. by a time policy against (amongst other things) perils of the seas. The policy contained the following clause: "Warranted free of capture, seizure, and detention, and the consequences thereof, or any attempt thereat, piracy excepted, and also from all consequences of hostilities, or warlike operations, whether before or after declaration of war."

The ship, while on a voyage from South America to Havre, was at about mid-day on Jan. 30, 1915, torpedoed by a German submarine twenty-five miles from Havre. The torpedo struck her well forward, and she began to settle down by the head. She kept afloat, and with the assistance of tugs she reached Havre on the evening of the same day. She was drawing too much water to enter the inner harbour or to be docked, and she was taken alongside a quay in the outer harbour. The weather became stormy, and owing to the swell coming into the harbour she began to bump against the quay and against a pumping vessel alongside of her; and the harbour authorities, fearing that she would sink at the quay, which was used solely for British Army and Red Cross purposes, and thus block it, ordered her to a berth inside the outer breakwater, where she was moored. She remained there for two days, taking the ground forward on each ebb tide, but floating again with the flood, until on the morning of Feb. 2 her bulkheads gave way, and she did not float again and became a total loss. In an action by the shipowners on the policy to recover as for a loss by perils of the seas:—

Held, that, as the ship was never out of immediate danger from the damage caused by the torpedo to the time of her final loss, the torpedoing was the proximate cause of the loss, and that the defts. therefore were protected by the warranty against "all consequences of hostilities or warlike operations."

Reischer v. Borwick [1894] 2 Q. B. 548 followed. *LEYLAND SHIPPING CO. v. NORWICH UNION FIRE INSURANCE SOCIETY* - C. A. [1917] 1 K. B. 873; 86 L. J. (K. B.) 905; 22 Com. Cas. 256; 116 L. T. 327; 33 T. L. R. 228

Motor Car.

See above, "Held Covered" Clause, col. 207.

Stoppage of Machinery.

Refrigerating machinery — Inefficiency — Whether equivalent to breakdown.

The plts. took out a policy of marine insurance on produce, including chickens and ducks, shipped from Hankow to the United Kingdom. The policy insured against loss "caused by a stoppage of refrigerating machinery for more than 24 consecutive hours." On the voyage the refrigerating machinery was losing its carbon dioxide, and in order to limit the consumption the engineer cut off one of the compressors, but the machinery as a whole did not stop or threaten to stop. The plts. brought an action against the

INSURANCE (MARINE) (Stoppage of Machinery)—continued.

insurance co. for loss which they alleged to have been caused by a breakdown of the machinery within the policy :—

Held, that the mere inefficiency of the refrigeration did not constitute a stoppage of the machinery within the policy, and the plts. were not entitled to recover. **VESTY BROTHERS v. UNION INSURANCE SOCIETY OF CANTON**
Rowlatt J. 33 T. L. R. 438

Suing and Labouring Clause.

See below, War Risks, col. 212.

Total Loss.

See below, War Risks, col. 210.

Unseaworthiness.

Time policy—Ship unseaworthy in two respects—Assured privy as to the one—Loss of ship attributable to the other—Liability of insurer—Marine Insurance Act, 1906 (6 Edw. 7, c. 41), s. 39, sub-s. 5.

The "loss attributable to unseaworthiness," for which under s. 39, sub-s. 5, of the Marine Insurance Act, 1906, the insurer under a time policy is not to be held liable, is a loss attributable to unseaworthiness to which the assured was privy.

A ship which was insured under a time policy was at the time of her being sent to sea unseaworthy in two respects: her hull was in an unfit state for the voyage, and her crew was insufficient. The assured knew of the insufficiency of the crew but not of the unfitness of the hull. The ship was lost on the voyage by reason of her unseaworthiness in the latter respect :—

Held, that the sub-section afforded no defence to the insurers. **THOMAS v. TYNE AND WEAR STEAMSHIP FREIGHT INSURANCE ASSOCIATION** - - - **Atkin J.** [1917] 1 K. B. 938; 86 L. J. (K. B.) 1037; 22 Com. Cas. 239; 117 L. T. 55; [1917] W. N. 123

War Risks.

Cause of Loss.

Loss of vessel—Absence of explanation—Presumption—Displacement of presumption by evidence.

The plts., who were owners of a steamship, insured her with the first defts. against war risks and with the second defts. against the usual marine perils to the exclusion of war risks. She left Liverpool in Jan., 1917, for Rangoon via the Cape and had not since been heard of. She was seaworthy, and though the weather was bad it was not sufficient to explain the loss. She was believed to have passed through an area in which an enemy submarine was operating at the time. In an action on the war risk policy and alternatively on the ordinary marine policy :—

Held, that though, when there was no evidence as to the cause of the loss, there was, in the absence of unseaworthiness, a presumption even in time of war that the loss was due to an ordinary marine peril, yet on the facts there was sufficient evidence that the vessel was sunk by an enemy submarine, and therefore the loss fell on the war risk underwriters. **BRITISH AND**

INSURANCE (MARINE) (War Risks)—contd.

BURMESE STEAM NAVIGATION CO. v. LIVERPOOL AND LONDON WAR RISKS INSURANCE ASSOCIATION, LD. AND THE BRITISH AND FOREIGN MARINE INSURANCE CO. - - - **Bailhache J.**
34 T. L. R. 140

Loss through consequences of hostilities—Damage to ship by running on wreck of vessel sunk by enemy submarine.

The plts.' steamship *Sherwood* was insured by a policy issued by the deft. association which was expressed to cover only the risks of capture, seizure, and detainment by the King's enemies, all consequences of hostilities, and all risks excluded from an ordinary policy by the f. c. and s. clause. The policy was also subject to the rules of the deft. association, which provided that the ship was to be deemed to be fully insured by an ordinary policy against all other risks. During the currency of the policy the *Sherwood* ran upon, and was seriously damaged by, the submerged wreck of another vessel which had been torpedoed and sunk in shallow water by an enemy submarine some hours previously. There had been no time to mark the spot where the wreck lay. In an action to recover under the policy :—

Held, that the damage to the *Sherwood* was not proximately caused by the perils insured against in the policy sued on, and therefore that the plts. were not entitled to recover. **WILLIAM FRANCE, FENWICK & CO. v. NORTH OF ENGLAND PROTECTING AND INDEMNITY ASSOCIATION**

Bailhache J. [1917] 2 K. B. 522; 86 L. J. (K. B.) 1109; 116 L. T. 684; 23 Com. Cas. 37; [1917] W. N. 206; 33 T. L. R. 437; 61 S. J. 577

Peril of capture—Constructive total loss—"Restraint of princes"—Outbreak of war—Putting into neutral port to avoid risk of capture—Loss of adventure.

Appeal from a decision of the C. A. [1916] 2 K. B. 156, affirming a decision of **Bailhache J.** [1915] 3 K. B. 410.

The appellants shipped goods on board a German ship for carriage from Calcutta to Hamburg, and insured them on that voyage with the respondents against (inter alia) men of war, enemies and restraint of princes. On Aug. 4, 1914, in the course of the voyage, war broke out between Great Britain and Germany, and on Aug. 6 the master put into Messina (a neutral port) to avoid risk of capture and abandoned the voyage. At this time the ship had not been chased by a hostile ensign, but a letter of the Admiralty, in answer to an inquiry by the appellants, stated "that any German steamer proceeding on or after the 5th August through the Mediterranean on a voyage to Hamburg would have been in peril of capture . . . when outside neutral waters."

The appellants, after giving notice of abandonment, brought an action against the respondents for a constructive total loss.

Bailhache J. gave judgment for the respondents.

The H. L. dismissed the appeal. **BECKER, GRAY & CO., v. LONDON ASSURANCE CORPORATION** - - - **H. L. (E.)** [1917] W. N. 317; 34 T. L. R. 36; 62 S. J. 35

INSURANCE (MARINE) (War Risks)—*contd.**Extinction of Light.**Loss of vessel—Liability of insurer.*

The plts. insured their vessel, the *A.*, with the deft. and other underwriters against "war risks, French conditions, including extinction of lights," &c. A week later, while on a voyage from Rouen to the Bristol Channel, the *A.* ran on the rocks off the Cap de la Hague, the light on which owing to the war had been extinguished. The master of the *A.* admitted that he had not attempted to steer and would not have steered by the light, but said that if it had been burning he would have seen it and thus realized that he had left his course. In an action by the plts. on the policy:—

Held, that, as it was impossible to conclude that the presence of the light would have certainly led to the saving of the vessel, the loss could not be said to result from the "extinction of lights," and that, therefore, the deft. was not liable under the policy. *LE QUELLEC ET FILS v. THOMSON* - Rowlatt J. 86 L. J. (K. B.) 712

Freight.

Abandonment of voyage—Loss—Actual or constructive—Notice of abandonment—German charterers—Material circumstance—Non-disclosure—Marine Insurance Act, 1906 (6 Edw. 7, c. 41), ss. 18, 62.

On Jul. 31, 1914, a German firm, who were the charterers of the plts.' ship, cabled instructions to them for the ship, which was then at Portland, to proceed to Kustendji, a Roumanian port, and to load there a cargo for the charterers. On the same day the plts., without disclosing the circumstances that the charterers were a German firm, effected an insurance against war risks with the defts. on freight per the ship at and from Portland to Kustendji and back to certain Continental or English ports. The ship started forthwith on the voyage, and on Aug. 6 arrived at Gibraltar, where in consequence of the outbreak of war on Aug. 4 she remained awaiting orders. On Aug. 11, by the plts.' orders, the voyage to Kustendji was abandoned and the ship proceeded to Norfolk, Virginia. In an action to recover a total loss under the policy of insurance:—

Held, that the outbreak of war having made it illegal for the plts. to perform the charter-party, and there being no reasonable prospect of obtaining any other freight engagement at Kustendji, there had been an actual, not a constructive, total loss of the insured freight; and that, even if the loss were a constructive total loss, notice of abandonment was in the circumstances unnecessary.

Held, also, that, having regard to the decision of *British and Foreign Marine Insurance Co. v. Sanday & Co.* [1916] 1 A. C. 650, the fact that the charterers were a German firm was on Jul. 31, 1914, material, but that, as at that date that fact, if disclosed, would not in fact have influenced the judgment of a prudent insurer, it was not a "material circumstance" within s. 18 of the Marine Insurance Act, 1906, so as to necessitate its disclosure, and the non-disclosure therefore, did not invalidate the insurance.

INSURANCE (MARINE) (War Risks)—*contd.*

ASSOCIATED OIL CARRIERS, LD. v. UNION INSURANCE SOCIETY OF CANTON, LD.

Atkin J. [1917] 2 K. B. 184; 86 L. J. (K. B.) 1068; 116 L. T. 503; 33 T. L. R. 327; 22 Com. Cas. 346

*Suing and Labouring Clause.**Expense of storage and reshipment of goods.*

By a policy of marine insurance underwritten by the deft. the plts. were insured in respect of a wood cargo laden on a Norwegian ship for a voyage from a Baltic port to an English port. The policy, which contained the usual suing and labouring clause, was against war risk only, and excluded all claims arising from delay. Shortly after sailing in Nov., 1914, the ship was stopped by German war vessels, and the master was told that as wood had been declared contraband by the German Government the ship would not be allowed to pass the Sound. The ship put into a Norwegian port, where the cargo was discharged and stored for some time, but was subsequently reshipped and forwarded to its destination in England:—

Held, that under the suing and labouring clause the plts. were entitled to recover the cost of storage for a reasonable time and the proper cost of forwarding the cargo to its port of destination at the expiration of that time.

Great Indian Peninsula Ry. v. Saunders (1861) 1 B. & S. 41; (1862) 2 B. & S. 266 distinguished. *WILSON BROTHERS BOBBIN CO. v. GREEN*

Bray J. [1917] 1 K. B. 860; 86 L. J. (K. B.) 713; 22 Com. Cas. 185; 116 L. T. 637

*War Region.**American waters.*

By an agreement supplemental to a charter-party it was agreed that if the vessel was ordered by the charterers to trade "in the war region" war risk insurance premiums payable by the owners should be refunded to them by the charterers. In Oct., 1916, the charterers were running the vessel in American waters, and owing to the appearance of a German submarine, which destroyed six vessels in an area proximate to that in which the vessel was trading and was ordered by the charterers to trade in the future, the owners paid an increased insurance premium. In an action by the owners against the charterers to recover the amount:—

Held, that the vessel had been ordered by the charterers to trade "in the war region," and the plts. were entitled to recover.

Decision of *Bailhache J.* (33 T. L. R. 132) reversed. *MASKINONGE STEAMSHIP CO. v. DOMINION COAL CO.* - C. A. 33 T. L. R. 340

Warranty.

Words qualifying subject-matter—Intention to warrant—Australia—Commonwealth Marine Insurance Act (No. 11 of 1909), ss. 39, 41.

In a policy of marine insurance, *prima facie* all the words which the policy contains (except parts of the general form inapplicable to the particular transaction) are words of contract. Words qualifying the subject-matter of the

INSURANCE (MARINE) (Warranty)—*contd.*

insurance *prima facie* are words of warranty constituting, under s. 39 of the Commonwealth Marine Insurance Act, 1909 (a section in the same terms as s. 33 of the English Act of 1906), a condition which must be complied with, whether it is material to the risk or not. In considering whether words in a policy were intended by the parties to be a warranty regard must be had to the nature of the transaction, and the known course of business and forms in which similar transactions are carried out, but not to the particular facts found to have occurred at the inception of the transaction or during the negotiations.

In a proposal for the insurance of a horse against marine risks and mortality during a voyage the horse was wrongly stated to be by Soult out of St. Paul mare. The policy incorporated the proposal and made it the basis of the contract. The assured sued to recover a total loss :—

Held, that the words above mentioned constituted a warranty within s. 39 of the Commonwealth Marine Insurance Act, 1909, and that the action consequently failed.

Observations in *Union Insurance Society of Canton v. George Wills & Co.* [1916] 1 A. C. 281, 286, 288, explained. *YORKSHIRE INSURANCE Co. v. CAMPBELL* - J. C. [1917] A. C. 218; 86 L. J. (P. C.) 85; 115 L. T. 644; 33 T. L. R. 18

INSURANCE (NATIONAL HEALTH)—*Panel doctor—Agreement—Question arising between doctor and insurance committee—“Submission” to arbitration—National Health Insurance (Medical Benefit) Regulations (England), 1913, reg. 51—Arbitration Act, 1889 (52 & 53 Vict. c. 49), ss. 4, 27.*

Appeal from an order of Rowlatt J. in chambers.

The plt. was a medical practitioner practising in the defts.' district. By an agreement (in printed form) dated Dec. 9, 1913 (which came into force on Jan. 12, 1914), and made between the plt. and the defts., the plt. agreed to give medical treatment to all persons who were for the time being entitled to obtain treatment from him, his remuneration being calculated as therein mentioned.

By clause 1: “The National Insurance Acts, 1911 to 1913, and the National Health Insurance (Medical Benefit) Regulations (England), 1913 . . . are incorporated in and form part of this agreement.”

By clause 14 any dispute or question (with an exception not material) arising between the insurance committee and the practitioner relating to the construction of the agreement or the rights and liabilities of the committee or the practitioner thereunder was to be referred to the Insurance Commrs.

By reg. 51 of the regulations (which came into operation on Jan. 12, 1914): “Where under the provisions of these regulations or of any agreement made between the committee and a practitioner on the panel . . . any question arising between the committee, and the practitioner . . . is referred . . . to the Com-

INSURANCE (NATIONAL HEALTH)—*contd.*

missioners, the Commissioners shall determine such question . . . in such manner as they think fit, and, if in the opinion of the Commissioners a hearing is required, they may authorise any two or more of the Commissioners to hear and determine such question . . . and any decision of the Commissioners or any of them made under this article shall be final and conclusive.”

The plt. brought an action against the defts. to recover a proportion of capitation fees under art. 31 (1.) of the regulations, which he alleged had been wrongly paid to another medical practitioner in respect of certain insured persons. The defts. applied for an order under s. 4 of the Arbitration Act, 1889, staying further proceedings in the action. The district registrar made the order, but Rowlatt J. set it aside. The learned judge made a note upon his order: “I set aside the order because it appeared by s. 51 of the regulations that the Commissioners do not act as arbitrators but may depute others to decide for them. This being so I thought the agreement was not a ‘submission’ within the Arbitration Act. Nor has it statutory force in its operation of excluding the jurisdiction of the Court, as I cannot find any authority to the Commissioners to do that.”

The defts. appealed.

The C. A. allowed the appeal. *CLEMENTS v. DEVON COUNTY INSURANCE COMMITTEE* - C. A. [1917] W. N. 341

INSURANCE (WAR).

See **INSURANCE (MARINE)**, col. 209.

INTENTION—Merger.

See **MERGER**, col. 276.

— Prize Court—Goods—Neutral claimant—Transfer to enemy after seizure.
See **PRIZE COURT**, col. 327.

INTEREST—Cesser of.

See **REVENUE**, col. 354.

— Error in description of.

See **INSURANCE (MARINE)**, col. 207.

— Insurable.

See **INSURANCE (LIFE)**, col. 203.

— Merger.

See **MERCER**, col. 276.

INTEREST (Money)—Debenture.

See **COMPANY**, col. 88.

— Excessive.

See **BANKRUPTCY**, col. 62.

— Legacy.

See **WILL**, col. 473.

Money-lenders—Repayment by instalments—Default—Interest in event of default—Onus of proof.

The plt. lent the debt. 560 rupees, and the debt. signed an agreement to pay the plt. 840 rupees in twenty equal monthly instalments, the whole amount to become payable at once on failure to pay any instalment, and if the debt. was then unable to pay the whole amount interest was to be payable. In an action to recover the

INTEREST (Money)—continued.

whole amount together with interest on the ground of failure to pay an instalment, there was evidence of the loan, but no specific evidence of the debt's alleged default, and the judge gave judgment for the plt. for the principal claimed, but dismissed the claim for interest on the ground that the onus lay on the plt. to prove a liability to pay interest, and that as there was no evidence of default this onus had not been discharged:—

Held, on appeal, that the fact that the plt. was entitled to judgment for the principal showed that the debt must have made a default, and therefore the plt. was entitled to judgment for the interest as well as for the principal.
VELCHAND v. ATHERTON - C. A. 33 T. L. R. 232

Ship requisitioned by Admiralty—War risks taken by Admiralty—Loss by war risk—Whether value recoverable from Admiralty was money recoverable on policy of insurance—Civil Procedure Act, 1833 (3 & 4 Will. 4, c. 42), s. 29.

Special case stated by an umpire for the opinion of the Court.

On Jan. 26, 1915, the *Dromonby*, a steamship belonging to Sir R. Ropner & Co., Ltd. (hereinafter called "the owners"), was requisitioned by the Admiralty upon the terms of the Admiralty form of charter known as T. 99, clause 19 of which was in these terms: "The risks of war which are taken by the Admiralty are those risks which would be excluded from an ordinary English policy of marine insurance by the following, or similar, but not more extensive clause—'Warranted free of capture, seizure and detention and the consequences thereof, or of any attempt thereat, piracy excepted, and also from all consequences of hostilities or warlike operations, whether before or after declaration of war.' Such risks are taken by the Admiralty on the ascertained value of the steamer, if she be totally lost, at the time of such loss, or, if she be injured, on the ascertained value of such injury. Should a dispute arise as to the value of the steamer the same shall be settled" by arbitration.

On Jan. 13, 1916, the *Dromonby*, whilst employed by the Admiralty under the requisition, was totally lost by a risk of war. A dispute thereupon arose as to the value of the steamship and as to the right of the owners to receive interest on that value, and that dispute having been referred to arbitration the umpire found that at the time of her loss the value of the vessel was 72,300*l.*, and that on Mar. 18, 1916, and Aug. 21, 1916, two sums, amounting respectively to 50,000*l.* and 12,500*l.*, were paid on account by the Admiralty to the owners.

In support of their claim for interest the owners relied on the provisions of the Civil Procedure Act, 1833 (3 & 4 Will. 4, c. 42); they also relied on a course of business, but as the Court *held* that there were no facts to support the claim on this head it is unnecessary to refer to it further.

The questions for the opinion of the Court were whether in the circumstances the owners were in law entitled to interest, or whether

INTEREST (Money)—continued.

interest could lawfully be allowed or damages in the nature of interest could lawfully be given.

The Div. Ct. *held* that this was not a case in which interest or damages in the nature of interest could be given. ADMIRALTY COMMISSIONERS v. SIR R. ROPNER & CO., LTD.

Div. Ct. [1917] W. N. 173; 86 L. J. (K. B.) 1030; 117 L. T. 58; 33 T. L. R. 362

— Will—Trust legacy—Income for maintenance of wife and children.

See WILL, col. 473.

INTERNATIONAL LAW—Ambassador—Privilege—Waiver—Administration action—Submission to jurisdiction—Judgment for payment into Court—Writ of sequestration—Leave to issue—Diplomatic Privileges Act, 1708 (7 Anne, c. 12), s. 3—Courts (Emergency Powers) Acts, 1914–1916.

An Ambassador in this country is entitled to complete immunity from the jurisdiction of the local Courts except in cases in which he submits to or invites the jurisdiction.

Where an Ambassador, sued as administrator to an intestate's estate, has submitted to the jurisdiction down to judgment, and an order has been made determining his liability to pay money into Court, he can still assert his immunity from process by way of execution and set up the Diplomatic Privileges Act, 1708, as an answer to an application for leave to issue execution against his personal property.

Taylor v. Best (1854) 14 C. B. 487 discussed.

In re Republic of Bolivia Exploration Syndicate [1914] 1 Ch. 139 followed. *In re SUAREZ*.

SUAREZ v. SUAREZ - Eve J. [1917] 2 Ch. 131;

86 L. J. (Ch.) 673; 117 L. T. 239; [1917]

W. N. 188; 33 T. L. R. 405; 61 S. J. 524

On the termination of the appointment of the debt, as Bolivian Minister the summons in the above-named case (which was for leave to proceed to execution for the enforcement of a sum of money ordered to be paid into Court by the debt.) was restored to the list and Eve J. made the order ([1917] W. N. 312).

On appeal the C. A. affirmed the last-mentioned order - C. A. [1917] W. N. 372; 34 T. L. R. 127; 62 S. J. 158

INTERMENT—British subject.

See EMERGENCY LEGISLATION, col. 161.

INTERROGATORIES—Appeal to House of Lords—Question of procedure—Relevancy—Practice—R. S. C., O. XXXI., rr. 1, 2.

Appeal from an order of the C. A. reversing an order of Coleridge J. as to the relevancy of interrogatories.

The action was brought by the respondents, who are printers, for the price of goods sold and delivered to the appellant.

The defence was that the goods were supplied not to the appellant but to the Piccadilly Theatres, Ltd. The respondents replied that the co. acted in this matter as the agent of the appellant, and proposed certain interrogatories for the examination of the appellant, including the following: 1. Did you not form or cause to be formed the Piccadilly Theatres, Ltd.?

INTERROGATORIES—*continued.*

2. Was not such co. formed for the purpose of the management of the Marlborough Theatre or of producing theatrical entertainments thereat? 3. Did you not own the whole or some and what part of the shares in the said co.? 4. Did you not supply some and what moneys for the purpose of the said theatre or the said theatrical entertainments?

The Master allowed these interrogatories, but his order was reversed by Coleridge J. in chambers.

The C. A. reversed the order of Coleridge J. and restored the order of the Master allowing the interrogatories.

The H. L. dismissed the appeal. *BLAIR v. HAYCOCK, CADLE CO.* - *H. L. (E.) [1917]*
W. N. 319; 34 T. L. R. 39; 62 S. J. 68

INTERVENTION—Petition for nullity—Omission to state birth of issue—Decree nisi—Intervention of child.

* See **DIVORCE**, col. 146.

—Trustee—Bankruptcy.

See **BANKRUPTCY**, col. 64.

INTESTATE—Administration—Receiver pending probate.

See **PROBATE**, col. 333.

INTRODUCTORY WORDS—Subsequent limitations—Estate by implication.

See **WILL**, col. 471.

INVASION — “Foreign enemy” — “Military power”—Insurance.

See **LANDLORD AND TENANT**, col. 245.

INVESTMENT—Duty to advise customer as to—Bank.

See **BANK**, col. 56.

—Mortgage—Conversion.

See **CONVERSION**, col. 113.

IRELAND.

Annuity. See **ANNUITY**.

Appeal. See **JUSTICES**.

Army. See **ARMY**.

Audit, col. 219.

Bankruptcy, col. 220.

Certiorari, col. 220.

Charity, col. 221.

Cheque. See **BANK**.

Church, col. 221.

Costs, col. 221.

Dublin Police District. See below, **Rates**.

Election. See **ELECTION**.

Emergency Legislation, col. 222.

Evidence, col. 222.

Fisheries. See **LIMITATIONS, STATUTES OF**.

Frauds, Statute of. See **VENDOR AND PURCHASER**.

IRELAND—*continued.*

Highway. See **HIGHWAY**.

Industrial and Provident Societies.
See **INDUSTRIAL AND PROVIDENT SOCIETIES**.

Justices, col. 223.

Land Acts—

Agricultural Holding, col. 223.

Fair Rent. See above, *Agricultural Holding*.

Land Purchase, col. 224.

Land Registry, col. 225.

Renewable Leasehold, col. 226.

Licensing Acts, col. 227.

Limitations, Statutes of. See **LIMITATIONS, STATUTES OF**.

Local Government—

Audit. See above, **Audit**.

Local Government Board. See below, *Rural District Councils*.

Public Health Acts, col. 228.

Rural District Councils, col. 228.

Town, col. 229.

Local Government Board. See above, **Local Government**.

Lunatic, col. 229.

Lunatic Asylums. See above, **Audit**.

Mandamus. See above, **Audit**.

Mortgage, col. 229.

Nuisance. See **NUISANCE**.

Parties. See **PARTIES**.

Promissory Note. See **EMERGENCY LEGISLATION**.

Public Health Acts. See above, **Local Government**.

Rules—

Apportionment, col. 230.

Dublin Police District, col. 230.

Poor Rate, col. 231.

Registration of Title. See above, **Land Acts**.

Renewable Leasehold. See above, **Land Acts**.

Roads. See **HIGHWAY**.

Rural District Councils. See above, **Local Government**.

Settled Land. See **SETTLED LAND**.

Settlement. See **SETTLEMENT**.

Towns Improvement Act. See above, **Local Government**.

Vendor and Purchaser. See **VENDOR AND PURCHASER**.

Water Rate, col. 231.

Will. See **ELECTION**.

IRELAND—continued.**Annuity.**

See ANNUITY, col. 21.

Appeal.

— Justices.

See JUSTICES, col. 235.

Army.

— Military service.

See ARMY, col. 43.

Audit.

Certiorari and mandamus—Certiorari inapplicable—Audit of accounts—Discretion.

The function of an auditor in examining and passing the accounts of a district asylum for the purpose of the capitation grant under s. 58 of the Local Government (Ireland) Act (61 & 62 Vict. c. 37) is ministerial or administrative, and not judicial. Such audit cannot be the subject of certiorari unless made so by statute.

No writ of mandamus can issue to an auditor on such audit, as the auditor can neither be directed to revise the accounts in accordance with the applicant's interpretation of rights, nor be directed to hear and determine, as he has already done so.

Where an auditor in such audit misunderstands or misapplies an enactment to the prejudice of some person interested in the audit, the proper remedy is a substantive action. Error in decision either on legal merits or on a statute cannot be reviewed on mandamus.

Reg. v. Sheehan [1898] 2 I. R. 683; *Rex v. L. G. B.* [1902] 2 I. R. 349; *Rex v. Mahony* [1910] 2 I. R. 698 considered and applied. *REX v. CONSIDINE* - Div. Ct. [1917] 2 I. R. 1

District lunatic asylums—Accounts—Accounting officer—Resident medical superintendent—“Secretary or clerk”—Right to call upon to assist at audit—Powers of Local Government Board and their auditors in reference to asylum officers—Rule-making authority—Function of auditor—Local Government (Ireland) Act, 1898 (61 & 62 Vict. c. 37), s. 9, sub-s. 6, and s. 108—Local Government (Ireland) Act, 1902 (2 Edw. 7, c. 38), s. 22—Public Bodies Order, 1904—Public Bodies Order, 1915.

Pursuant to the Local Government (Ireland) Acts, 1898 to 1902, the Local Government Board on Feb. 5, 1915, made an order entitled “the Public Bodies Order, 1915,” which provided that “the clerk or chief clerk of the Asylum Committee shall attend at the time and place appointed by the auditor for the audit of the accounts, and shall render to the said auditor all such assistance during the course of the audit as he, the said auditor, may from time to time require, whether by preparing returns, producing documents, calling back accounts, vouchers, or other documents, or otherwise as to the said auditor may seem requisite for facilitating or expediting the said audit” :—

Held (affirming the K. B. D., Cherry L.C.J. and Gibson J., Kenny J. dissenting), that the resident medical superintendent was the person bound to perform the duties prescribed in so

IRELAND (Audit)—continued.

far as these duties were imposed upon “the secretary or clerk.”

Held, also, that the rule-making authority for regulating the government of lunatic asylums and officers and servants thereof was the committee, with the approval of the Lord Lieutenant; that the Local Government Board had no statutory authority to impose duties on the officers of asylums, and that the Public Bodies Order, 1915, so far as it affected these officers, was ultra vires.

Held, further, that the audit of asylum accounts should be an independent investigation by the auditor himself, and that he had no power to delegate any part of his duties and functions to the accounting officer, or any other official whose accounts were being audited. *REX v. M'LOUGHLIN* - C. A. [1917] 1 I. R. 174

Bankruptcy.

Examination of witnesses—Unsatisfactory answering—Committal by judge in bankruptcy—Order for release by Court of Appeal—Right of appeal to House of Lords—Bankrupt and Insolvent (Ireland) Act, 1857 (20 & 21 Vict. c. 60), s. 385.

Upon appeal to the H. L. from a decision of the C. A. in Ireland ([1916] 2 I. R. 283), sub nom. *In re McLoughlin* :—

Held (agreeing with the judgment of Ronan L.J.), that, the order of Boyd J. having been made on the grounds that the evidence of both the bankrupt and his wife as a whole was characterized by fencing and shuffling and a desire to avoid giving any definite answers if possible, and that it was plainly not candid, the judge was entitled to form the opinion that it was false and unsatisfactory, and justified in coming to the conclusion that a committal might induce the witnesses to make a full, true, and candid statement.

Held, also, that an appeal lay from the order of the C. A. (Ir.) reversing the committal order made by Boyd J.

Held, also, that the order of the C. A. (Ir.) should be reversed and that of Boyd J. should be restored. *HOLLINSHEAD v. M'LOUGHLIN*

H. L. (Ir.) [1917] 2 I. R. 28; [1916] W. N. 384

Lease—Election by assignee—Equitable mortgage—Landlord—Lessor—Lessee—Bankrupt and Insolvent Act (Ireland), 1857 (20 & 21 Vict. c. 60), s. 271.

The rule of practice acted on for several years in bankruptcy in Ireland, that the Court will not, in the exercise of its discretion, order an assignee in bankruptcy to elect whether or not he will accept a lessee's interest in a lease vested in a bankrupt, where it is subject to a mortgage, is not a hard and fast rule, but ought to be departed from under special circumstances.

The period of time within which the assignee will be ordered to elect depends on the circumstances of each particular case. *In re COLEMAN*

Pim J. [1917] 2 I. R. 56

Certiorari.

See above, Audit, col. 219, LICENSING ACTS, col. 253, and below, Local Government, col. 229.

IRELAND—continued.

Charity.

Will—Bequest “for establishing a monastery, or any other religious, ecclesiastical, or charitable institution”—*Failure of gift.*

A bequest to a trustee “for establishing a monastery or any other religious, ecclesiastical, or charitable institution which he in his absolute discretion shall think fit, or partly for such purpose or purposes, and partly for masses for the repose of the souls of the testatrix’s family,” is not a good charitable bequest.

The will contained a provision whereby, in the event of any question arising as to the legality or validity of the devises and bequests, or if any such devise or bequest should be illegal or invalid, the testatrix gave, devised and bequeathed all her property to the trustee absolutely without any trust, condition, or obligation.

Held, that the charitable gift having failed, the property went to the trustee absolutely under the ultimate gift over.

In re Douglas, Obert v. Barrow, 35 Ch. D. 472, distinguished; *Hunter v. Att.-Gen.* [1899] A. C. 309, followed. COMMISSIONERS OF CHARITABLE DONATIONS AND BEQUESTS *v.* MC CARTAN

O’Connor M.R. [1917] 1 I. R. 388

Will—Trust—Bequest to executors for the testator’s “best spiritual advantage.”

Gift, in the will of a Roman Catholic clergyman, of residue to the testator’s executors, who were also Roman Catholic clergymen, to dispose of it “to my best spiritual advantage, as conscience and sense of duty may direct.”—

Held, not charitable, but a lawful trust which the executors might execute. *In re GIBBONS. D’AUTON v. GIBBONS* - - - Barton J. [1917] 1 I. R. 448

Cheque.

See BANK, col. 55.

Church.

Trust—Appointment of new trustees—Power vested in “Lord Primate of All Ireland”—*Irish Church Act, 1869* (32 & 33 Vict. c. 42).

A settlement made in 1849 for the benefit of the Church of Ireland gave a power of appointing new trustees to the “Lord Primate of All Ireland” for the time being:—

Held, that the power of appointment was still exercisable by the Archbishop of Armagh, as there was nothing in the Irish Church Act, 1869, to take away the title of Lord Primate of All Ireland from the Archbishops of Armagh. *In re THE TRUSTS OF MARSHAL BERESFORD’S FUND. LORD ALDENHAM v. THE ARCHBISHOP OF ARMAGH* - - - Sargant J. 33 T. L. R. 208

Costs.

— Mortgage.

See MORTGAGE, col. 281.

Security for—Practice—Admiralty—O. LIX., r. 52.

In the case of a vessel registered as British, whose owner resides within the jurisdiction, an order for security for the costs of an appeal brought by the owner will not, in the absence

IRELAND (Costs)—continued.

of special circumstances, be made. *THE MASTER AND OWNER OF THE SCHOONER “B 1” v. THE YOUGHAL U. D. C.* - - - Gordon J. [1917] 2 I. R. 315

Dublin Police District.

See below, Rates, col. 230.

Election.

— Will.

See ELECTION, col. 154.

Emergency Legislation.

— Evidence.

See below, Evidence, col. 222.

Mortgagee’s action of ejectment—Courts (Emergency Powers) Act, 1914 (4 & 5 Geo. 5, c. 78).

The institution of an action of ejectment on the title by a mortgagee is not the realization of a security contemplated by s. 1, sub-s. 1 (b), of the Courts (Emergency Powers) Act, 1914, but is only a step towards realization, and, consequently, leave need not be obtained before issuing the writ. *THE NATIONAL BANK, LD. v. CLAFFEY* - - - Madden J. [1917] 2 I. R. 281

See EMERGENCY LEGISLATION, col. 155.

. Evidence.

Perpetuation of testimony—Lost deed—Destruction during civil commotion—Practice—Law and Procedure (Emergency Provisions) (Ireland) Act, 1916 (6 & 7 Geo. 5, c. 46), s. 1, sub-s. 4—*General jurisdiction of Court.*

During the rebellion in Ireland in Apr., 1916, the offices of certain solicitors in the city of Dublin were destroyed, and certain title deeds and documents, of which the solicitors were custodians, perished:—

Held, that the Court had jurisdiction on an originating summons to order that the evidence of witnesses be taken and be preserved by being filed in the Record and Writ Office.

Held, also, that the evidence should, inter alia, be directed to the following points: (1.) The existence of the deed before the rebellion which caused its destruction; (2.) the fact of its destruction; (3.) its due execution; and (4.) its contents.

Held, also, that the Court had under its general jurisdiction power to make a declaratory order, in a proper case, that a copy of a lost deed was a true copy. *SHANAHAN v. SHANAHAN*

Barton J. [1917] 1 I. R. 57

Perpetuation of testimony—Suit for—Law and Procedure (Emergency Provisions) (Ireland) Act, 1916 (6 & 7 Geo. 5, c. 46), s. 1, sub-s. 4.

Where an application was made under the Law and Procedure (Emergency Provisions) (Ireland) Act, 1916, s. 1, sub-s. 4, to perpetuate the testimony afforded by a deed which had been destroyed in the rebellion:—

Held, that the Act does not affect the general principles governing suits to perpetuate testimony, except by making such a suit maintainable in a suit involving present rights; that the granting of an order perpetuating testimony is in the discretion of the Court, and that such an

IRELAND (Evidence)—continued.

order will not be made in a case in which, in the opinion of the Court, it is not necessary.

The principles of law relating to suits to perpetuate testimony stated. *KELLY v. KELLY O'Connor M.R.* [1917] 1 I. R. 51

Fisheries.

See LIMITATIONS, STATUTES OF, col. 255.

Frauds, Statute of.

See VENDOR AND PURCHASER, col. 449.

Highway.

See HIGHWAY, col. 190.

Industrial and Provident Societies.

See INDUSTRIAL AND PROVIDENT SOCIETIES, col. 198.

Justices.

— Appeal.

See JUSTICES, col. 235.

— Military service—Jurisdiction.

See ARMY, col. 43.

Jurisdiction—Petty sessions—Form of order—Dismiss—Case outside the Petty Sessions Act—Omission to state whether dismiss “without prejudice” or “on the merits”—Res judicata—Petty Sessions (Ireland) Act, 1851 (14 & 15 Vict. c. 93), ss. 21, 42—Game Act (27 Geo. 3, c. 35), s. 10.

The procedure laid down by s. 21 of the Petty Sessions (Ireland) Act, 1851 (14 & 15 Vict. c. 93), is not obligatory in the case of a dismiss under the Game Act (27 Geo. 3, c. 35), and an order of the justices, made under that Act, stating that a charge is “dismissed,” without adding “on the merits” or “without prejudice,” is a good order, and a bar to subsequent proceedings for the same offence.

R. (Bridges and Ram) v. Armagh Justices [1897] 2 I. R. 236 considered. *REX (WALSH) v. TIPPERARY JJ.* - - Div. Ct. [1917] 2 I. R. 250

Jurisdiction—Petty sessions—Power to estreat a recognizance to be of good behaviour—Conflict between enacting part of a statute and schedule thereto—Petty Sessions (Ireland) Act, 1851 (14 & 15 Vict. c. 93), ss. 34, 36, Sched., Form (C).

Justices at petty sessions have no jurisdiction to estreat a recognizance to be of good behaviour.

It is a cardinal principle of construction that where there is a conflict between the forms given in a schedule to a statute and the enacting part of the statute, the forms must give way to the enacting part. *SHORE v. CUNNINGHAM*

Div. Ct. [1917] 2 I. R. 360

Land Acts.**Agricultural Holding.**

Crucial date—Redemption of Rent (Ireland) Act, 1891 (54 & 55 Vict. c. 67)—Application to redeem rent.

In an application by lessees to have the rent of a holding redeemed under the provisions of the Redemption of Rent (Ireland) Act, 1891, the

IRELAND (Land Acts)—continued.

main question in issue was whether the premises were substantially agricultural or pastoral:—

Held (reversing Fitzgerald J.), that the crucial time for ascertaining the status of the holding, as distinguished from the status of the tenant, was the date of the passing of the Land Law (Ireland) Act, 1896. *SARTORIS v. SHACKLETON* - - C. A. [1917] 1 I. R. 129

Fair rent—“Ordinary agricultural farm”—Nursery—Town park—Accommodation land—Practice—Evidence—Assessor’s report—Land Law (Ireland) Act, 1887 (50 & 51 Vict. c. 33), s. 9—Land Act, 1896 (59 & 60 Vict. c. 47), s. 7—Irish Land Act, 1903 (3 Edw. 7, c. 37), s. 88, sub-s. 2; s. 89.

Where no evidence is given on the hearing of a fair rent appeal to show that a holding, alleged to be town park, bears an increased value as accommodation land, the judicial commissioner cannot act upon a statement to that effect in the report of his assessor.

A holding used as a nursery for the growing of forest trees, flowers, and such like, may be an agricultural holding.

Per Ronan L.J. A holding so used, though agricultural in its character, is not “let and used as an ordinary agricultural farm” within the meaning of the Land Law (Ireland) Act, 1887, s. 9. *SAUNDERS v. HAMILTON*

C. A. [1917] 1 I. R. 145

Fair Rent.

See above, *Agricultural Holding*, col. 223.

Land Purchase.

Apportionment and redemption—Right of owner of head-rent—Mode of fixing price of superior rent where price of immediate head-rent previously fixed—Land Law (Ireland) Act, 1887 (50 & 51 Vict. c. 33), s. 16, sub-s. 3.

Under s. 16, sub-s. 3, of the Land Law (Ireland) Act, 1887 (50 & 51 Vict. c. 33), all that the owner of a part of an annuity, rent-charge, or rent apportioned upon land sold, is entitled to require is the redemption of such annuity, rent-charge, or rent, or of an apportioned part thereof. Under the discretionary parts of the sub-section the Court may, in any proper case, whether apportionment has been made or not, redeem the whole of any annuity, rent-charge, or rent affecting land sold. In the ordinary course, a head-rent payable out of land sold and other land will be apportioned, and the part apportioned as the land sold redeemed, unless there are special circumstances which render it expedient to redeem the whole rent.

So held by Wylie J. and affirmed by the C. A. *In re Pentland’s Estate* (1888) 22 L. R. (Ir.) 649 explained.

The mode of fixing the redemption price of a superior head-rent, where the price of the immediate head-rent had been previously fixed, discussed. *In re BARRY’S ESTATE*

C. A. [1917] 1 I. R. 11

Redemption—Superior interest—Agreement—Fixing price—Time—Irish Land Act, 1903,

IRELAND (Land Acts)—continued.

s. 64—*Land Purchase Acts Rules, July 2, 1910, O. VIII., r. 4.*

For the redemption under the Land Purchase Acts of a superior interest in normal conditions two orders are requisite—one an order for redemption; second, an independent order, fixing the redemption price. The parties had, in 1914, entered into a formal consent upon the price; but no order for redemption had been made.

Under O. VIII., r. 4, of the Land Purchase Acts Rules of July 2, 1910, the time for parties to agree upon the redemption price of a superior interest is "within one month from the date of the order for redemption":—

Held, that the time prescribed by the rule is within a period of one month, commencing with the date of the order for redemption, and ending one month from that date, and that the consent did not comply with the rule. *In re PONSONBY'S ESTATE* - C. A. [1917] 1 I. R. 466

Redemption—Superior interest—Quit rent—Jurisdiction of Land Commission to fix redemption price without consent of Commissioners of Woods and Forests—Land Law (Ir.) Act, 1887 (50 & 51 Vict. c. 33), s. 15, sub-s. 3—Land Law (Ir.) Act, 1896 (59 & 60 Vict. c. 47), s. 31, sub-ss. 1, 3, 8—Irish Land Act, 1903 (3 Edw. 7, c. 37), s. 64.

Sect. 15, sub-s. 3, of the Land Law (Ir.) Act, 1887, is impliedly repealed by s. 31 of the Land Law (Ir.) Act, 1896, and accordingly quit rent, payable out of lands sold under the Land Purchase Acts, will be redeemed, and the redemption price fixed, without the consent of the Commissioners of Woods and Forests.

Att.-Gen. for Ireland v. Proby, [1916] 2 A. C. 468 applied. *In re EDGEWORTH'S ESTATE*
Wylie J. [1917] 1 I. R. 270

Land Registry.

Discharge of equities—Application by person other than the registered owner—Jurisdiction of registrar—Practice—Substantive proceedings, when proper—Fraud—Mistake—Oral evidence.

A person whose title to land registered subject to equities arises under instruments executed prior to first registration is entitled to apply to the registrar to investigate the title, and the registrar has jurisdiction to entertain such an application.

The practice of discharging equities on the application of an interested person other than the registered owner approved.

The registrar has jurisdiction under s. 29 of the Local Registration of Title (Ireland) Act, 1891 (54 & 55 Vict. c. 66), to deal with a claim founded on an equity, even though the claim is one which might be made the subject of substantive proceedings in a Court of competent jurisdiction. But where the application raises a question of actual fraud or mistake coming within s. 34, sub-s. 1, of the Act of 1891, the registrar would as of course decline to entertain it.

Where important interests are involved, or it is desirable that evidence should be taken orally, the registrar should adjourn the hearing

IRELAND (Land Acts)—continued.

of the application to discharge equities in order that substantive proceedings may be taken.
In re SMITH - Madden J. [1917] 1 I. R. 170

Receivership deed—Registration on folio—Local Registration of Title (Ireland) Act, 1891 (54 & 55 Vict. c. 66), s. 45, sub-s. 1 (e)—Rules of 1910, O. IV., r. 20.

A receivership deed should be registered on the folio, as being a burden affecting the registered land. *In re M'EVROY (THOMAS)* - Madden J. [1917] 1 I. R. 168

Rectification of map—Practice—Local Registration of Title (Ireland) Act, 1891 (54 & 55 Vict. c. 66), O. VI., r. 1.

A dispute arose between the registered owner of land registered under the Local Registration of Title (Ireland) Act, 1891, and the owner of turbary rights as to the plot over which the latter was entitled to exercise such rights, the latter contending that the map was incorrect in this respect, the former contending that there was no mistake:—

Held, that the case did not come within s. 34, sub-s. 2, of the Act, or O. VI., r. 1 (1) (a) (ii.), of the rules made thereunder, and that accordingly an application to the Court to refer the question to the county court was misconceived.

Any proceeding taken under s. 34, sub-s. 1 of the Act on the ground of fraud or mistake, should be by an independent proceeding in a Court of competent jurisdiction, in the present case the equity side of the county court. *In re BUCKLEY* - Madden J. [1917] 1 I. R. 47

Subdivision without consent of Land Commission—Registration of owner of subdivided portion—Prohibition of alienation—Landlord and Tenant (Ireland) Act, 1870 (33 & 34 Vict. c. 46), s. 45—Landlord and Tenant (Ireland) Amendment Act, 1872 (35 & 36 Vict. c. 32), s. 2—Land Law (Ireland) Act, 1881 (44 & 45 Vict. c. 49), s. 30—Local Registration of Title (Ireland) Act, 1891 (54 & 55 Vict. c. 66), s. 35, sub-s. 1; s. 38, sub-s. 1—Irish Land Act, 1903 (3 Edw. 7, c. 37), s. 54.

When the proprietor of a holding purchased under the Irish Land Act of 1903, subject to a land purchase annuity, purports to subdivide his holding without the consent of the Land Commission, the person in whose favour such attempted subdivision is made is not entitled to be registered as owner under the Local Registration of Title (Ireland) Act, 1891. *In re GEOGHEGAN* - Ross J. [1917] 1 I. R. 361

Renewable Leasehold.

Renewable Leasehold Conversion Act, 1849 (12 & 13 Vict. c. 105)—Renewal fines—Lease for lives renewable for ever—Landed estates—Court conveyance—Indemnity against "rent"—Liability of indemnified lands to contribute—Fee farm rent.

The lands of D. and K., held under a lease for lives renewable for ever, dated Oct. 10, 1694, subject to the yearly rent of 15*l.*, late Irish currency, with a covenant by the lessor for perpetual renewal on payment by the lessee of one half-year's rent as a renewal fine on the

IRELAND (Land Acts)—continued.

fall of each life, were sold by the order of the Incumbered Estates Court, Ireland, in two lots, in the year 1858.

By Incumbered Estates Court conveyance, dated Jul. 17, 1858, reciting the lease, and the last renewal thereof, dated Apr. 1, 1844, the lands of D. were conveyed, subject to the rent reserved by the lease, and bound to indemnify all other lands charged with the said rent from the same.

The other lands, namely, the lands of K., were conveyed by a similar conveyance, made by the Landed Estates Court, dated Jul. 16, 1859, subject to the rent reserved by the lease, but indemnified against the payment of the said rent, and the costs and expenses occasioned by nonpayment thereof, by the lands of D., which had been sold subject and liable thereto, in full exoneration of all other lands charged therewith. There was no renewal of the lease since 1844, though all the lives had dropped.

The owner of the reversion expectant on the lease having called upon the owners of the lease to take out a fee-farm grant pursuant to the Renewable Leasehold Conversion Act, the plt., as owner of the lands of D., claimed a contribution from the deft., as owner of the lands of K., proportionate to their value towards payment of the septennial fines and the addition to the fee-farm rent representing the annual value of the renewal fines. The deft. contended that he was indemnified against all liability by the terms of the conveyance of Jul. 16, 1859, made to his predecessor in title:—

Held, that the lands of D. were bound to indemnify the lands of K. from payment of a proportionate part of the half-year's rent, payable as a renewal fine on the fall of each life in the lease and the renewals thereof, and against payment of a proportionate part of the increase of the yearly rent reserved by the lease occasioned by the conversion into a fee-farm grant pursuant to the Renewable Leasehold Conversion Act. *FITZPATRICK v. WARREN - O'Connor M.R.* [1917] 1 I. R. 156

Licensing Acts.

Certificate of justices—Renewal of licence—Certiorari—Householders' certificate—Necessity for personal signature—Licensing (Ireland) Act, 1833 (3 & 4 Will. 4, c. 68), s. 1; Licensing (Ireland) Act, 1874 (37 & 38 Vict. c. 69), s. 14.

The certificate from householders as to the character and conduct of a publican's business required by s. 1 of the Licensing (Ireland) Act, 1833 (3 & 4 Will. 4, c. 68), is not an essential preliminary to the jurisdiction exercised by the justices under s. 14 of the Licensing (Ireland) Act, 1874 (37 & 38 Vict. c. 69), in granting a certificate for the renewal of a licence.

Hence, certiorari does not lie to quash the order and adjudication of the justices acting under s. 14 of the Licensing (Ireland) Act, 1874, or the certificate granted by them for the renewal of the licence, merely because the certificate from the householders is informal or invalid.

Seemle: The certificate required by s. 1 of the Licensing (Ireland) Act, 1833, must be

IRELAND (Licensing Acts)—continued.

personally signed by the six householders. *REX (MOORE) v. ANTRIM J.J.* - Div. Ct. [1917] 2 I. R. 347

Limitations, Statutes of.

See *LIMITATIONS, STATUTES OF*, col. 255.

Local Government.**Audit.**

See above, *Audit*, col. 219.

Local Government Board.

See below, *Rural District Councils*.

Public Health Acts.

"Owner"—*Notice—Service on receiver in minor matter—Abatement of nuisance—Voluntary payment—"Imposition"—Lease—Covenant—Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52), ss. 2, 110, 111, 112, 120.*

The deft. held from the plt. (who was a minor ward of Court) certain premises under a lease which contained a covenant to pay the rent "clear above all taxes, charges, and impositions whatsoever." A nuisance existed upon the premises comprised in the lease, and the sanitary authority served a statutory notice under the Public Health (Ireland) Act, 1878, upon D., the receiver over the minor's estate as "owner," calling for the abatement of the nuisance, and requiring certain works to be executed. The works were duly executed, and proceedings by civil bill were, with the leave of the Lord Chancellor, instituted in the name of the minor, as plt., to recover the expense from the deft.:—

Held, that D. was not the owner within s. 2 of the Public Health (Ireland) Act, 1878; and that, therefore, there had been no service upon the owner of the notice prescribed by s. 110 of the Act.

Corporation of Bacup v. Smith, 44 Ch. D. 395, followed.

Held, also, by Campbell C.J. and Madden J., that the works were done voluntarily, and not under compulsion of the statute, and that the expense incurred was not an "imposition" within the terms of the deft.'s lease. *HACKETT v. SMITH* - Div. Ct. [Ir.] [1917] 2 I. R. 508

Rural District Councils.

Appointment and salary of officers of councils—Control of the Local Government Board—Labourers (Ireland) Act, 1886 (49 & 50 Vict. c. 59)—Local Government (Ireland) Act, 1898 (61 & 62 Vict. c. 37)—Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52), s. 11.

The appointment and salary of all officers of rural district councils discharging the general business of those bodies, on the true construction of the Local Government (Ireland) Act, 1898 (61 & 62 Vict. c. 52), s. 11, and the Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52), s. 11, are subject to the control and approval of the Local Government Board. *REX v. REDDY* Div. Ct. (Ir.) [1917] 2 I. R. 477

IRELAND (Local Government)—*continued*.*Town.*

Existence and extent of—Order of Local Government Board defining boundaries—Certiorari inapplicable—Towns Improvement (Ireland) Act, 1854 (17 & 18 Vict. c. 103).

Where a town seeks to adopt the provisions of the Towns Improvement (Ireland) Act, 1854 (17 & 18 Vict. c. 103), and the town at the date of the application has no defined boundaries, such town must have at least 1500 inhabitants according to the last census returns. The existence and extent of such town are matters of fact to be determined by the Local Government Board on such application. The unit selected by the census enumerator as a "town" is not necessarily the town as it actually exists, and is not the standard by which the existence and extent of the town under the Act are to be ascertained.

The order of the Local Government Board finally approving of the adoption of the Towns Improvement (Ireland) Act, 1854 (17 & 18 Vict. c. 103), being made final and conclusive proof for all purposes by sect. 15 of that statute, cannot be quashed on certiorari. So *held* by the K. B. D. and the C. A.

Rex v. L. G. B., 2 L. R. Ir. 316, overruled; *Rex v. L. G. B.*, 44 L. L. T. R. 176, applied. *REX v. LOCAL GOVERNMENT BOARD FOR IRELAND*
C. A. [1917] 2 I. R. 454

Local Government Board.

See above, Local Government, col. 228.

Lunatic.

Sale of undivided share of lunatic's land—Jurisdiction of Lord Chancellor—Lunacy Regulation (Ireland) Act, 1871 (34 & 35 Vict. c. 22), ss. 63, 67, 74—Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 2, sub-ss. 5, 6; s. 58, sub-s. 1; s. 62.

A lunatic so found by inquisition was owner of an undivided share of lands as tenant in tail and also of an undivided share of other lands as tenant in fee simple:—

Held, by the Lord Chancellor, that he had jurisdiction under s. 63 of the Lunacy Regulation (Ireland) Act, 1871, to direct a sale of the lunatic's share in the fee-simple lands to certain of the co-owners, and under ss. 58 and 62 of the Settled Land Act, 1882, to authorize the committee of the lunatic's estate on her behalf to exercise the lunatic's powers as a tenant for life under the Settled Land Acts, and to convey the share of the lunatic therein to the same persons in consideration of sums paid into Court to the credit of the matter. *In re D.*

O'Brien L.C. [1917] 1 I. R. 344

Lunatic Asylums.

See above, Audit, col. 219.

Mandamus.

See above, Audit, col. 219.

Mortgage.

— *Costs.*

See MORTGAGE, col. 281.

IRELAND (Mortgage)—*continued*.

— *Suit—Parties.*

See PARTIES, col. 296.

Nuisance.

— *Sewer — Sewage — Stream — Unreasonable and negligent exercise of statutory power.*

See NUISANCE, col. 263.

Parties.

See PARTIES, col. 296.

Promissory Note.

See EMERGENCY LEGISLATION, col. 159.

Public Health Acts.

See above, Local Government, col. 228.

*Rates.**Apportionment.*

Motions to make absolute two conditional orders for certiorari, which had been obtained by the Corporation of Belfast to quash the apportionment of a rate and demand note. Two questions were argued: (a) whether certiorari would lie; (b) whether the guardians' principle of apportionment was right. No order made. *REX (BELFAST CORPORATION) v. BELFAST POOR LAW GUARDIANS*

Div. Ct. [1917] 1 I. R. 443, n.

Dublin Police District.

Police rate—Apportionment between county borough and outside area—Local Government (Ireland) Act, 1898 (61 & 62 Vict. c. 37), s. 65, sub-s. 2, s. 66.

Under the Dublin Police Acts, as amended by the Local Government (Ireland) Act, 1898, s. 66, sub-ss. 2 and 4, the Commr. of Police is entitled to raise for the maintenance of the police force an amount not exceeding eightpence in the pound on the annual value of the rateable hereditaments in the police district, which is apportionable between the city of Dublin and the rest of the district according to rateable value.

Pursuant to s. 65, sub-s. 1, of the Local Government (Ireland) Act, 1898, a revaluation of the county borough of Dublin was made by which the total valuation of the rateable hereditaments in the borough was largely increased. This revaluation came into force on Apr. 1, 1916:—

Held, by the C. A. (Sir Ignatius O'Brien L.C. and Molony L.J., Ronan L.J. dissenting), affirming the decision of the M. R., that s. 65, sub-s. 2, of the Local Government (Ireland) Act, 1898, applied to the police district as if it was a union; that, following the decision of the C. A. in *Belfast Guardians v. Belfast Corporation* (No. 1), [1910] 2 I. R. 534, the word "at" in s. 65, sub-s. 2, was to be construed as meaning "before," not "after"; and that, therefore, the estimate and apportionment made in Mar., 1917, should have been made on the old valuation. *A.-G. v. DUBLIN CORPORATION*

C. A. [1917] 1 I. R. 401

IRELAND (Rates)—continued.**Poor Rate.**

Adjustment of rent—Rentcharge—Perpetual annuity—Local Government (Ireland) Acts, 1898 to 1901 (61 & 62 Vict. c. 37; 1 Edw. 7, c. 28)—Poor Relief (Ireland) Act, 1838 (1 & 2 Vict. c. 56).

By deed, dated Jan. 4, 1822, M. (in consideration of the payment of 1200*l.*, and other considerations therein mentioned) granted to A. and B., their heirs and assigns, a rentcharge of 400*l.* (Irish), charged on lands situate in the urban district of B., which were not agricultural lands, to hold same from and after his decease on certain trusts. All the estate and interest of A. and B. in the rentcharge became vested in the plts. All the estate and interest of M. in the lands charged with the rentcharge were vested in the defts. as trustees, and they were in receipt of the rents and profits paid by the tenants, which rents had been adjusted by virtue of the provisions of the Local Government (Ireland) Acts, 1898 to 1901, and they claimed in making payment to the plts. of the rentcharge to deduct in every year half the standard amount of poor rate, as defined by the Local Government (Ireland) Act, 1898:—

Held, that the defts. were entitled to make the statutory deduction. *HEWSON v. GREENE* Barton J. [1917] 1 I. R. 123

Registration of Title.

See above, Land Acts, col. 226.

Renewable Leasehold.

See above, Land Acts, col. 226.

Roads.

See HIGHWAY, col. 190.

Rural District Councils.

See above, Local Government, col. 228.

Settled Land.

— Appointment of trustees for purposes of Settled Land Acts.

See SETTLED LAND, col. 384.

Settlement.

See SETTLEMENT, col. 389.

Towns Improvement (Ireland) Act, 1854.

See above, Local Government, col. 229.

Vendor and Purchaser.

See VENDOR AND PURCHASER, col. 449.

Water Rate.

Public health—Sanitary authority—Rural district council—Absence of list or applotment book—Validity of rate—Magistrates—Case stated—Poor Relief (Ireland) Act, 1838 (1 & 2 Vict. c. 56), s. 65; Poor Relief (Ireland) Act, 1843 (6 & 7 Vict. c. 92), s. 10; Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52), s. 66.

A rural district council in charging a water rate under the Public Health (Ireland) Act, 1878

IRELAND (Water Rate)—continued.

(41 & 42 Vict. c. 52), s. 66, is under no obligation; statutory or otherwise, to prepare a list or applotment book such as is necessary to the valid charging of a poor rate, under the Poor Relief (Ireland) Act, 1838 (1 & 2 Vict. c. 56), s. 65, repealed and replaced by the Poor Relief (Ireland) Act, 1843 (6 & 7 Vict. c. 92), s. 10, and a water rate charged by a rural district council by a resolution only, without the preparation of such a list or book, may be a valid rate.

Rathdrum R. D. C. v. Saul, 39 I. L. T. R. 270, considered. *NORTH DUBLIN R. D. C. v. WALSH* Div. Ct. [1917] 2 I. R. 86

Will.

— Election.

See ELECTION, col. 154.

IRREMOVABILITY—Settlement—Poor law.

See POOR LAW, col. 306.

IRREVOCABLE POWER OF ATTORNEY.

See ALIEN ENEMY, col. 20.

ISSUE.

See WILL, col. 459.

ITALIAN DOMICIL—Donee of power of appointment with.

See POWER OF APPOINTMENT, col. 308.

ITALIAN WILL.

See POWER OF APPOINTMENT, col. 308.

JEWELLERY—Insurance.

See INSURANCE (LOSS), col. 205.

JUDGE—Benefices Act, 1898.

See ECCLESIASTICAL LAW, col. 151.

— County court—Jurisdiction—Bankruptcy.

See BANKRUPTCY, col. 58.

JUDGMENT—Bankruptcy.

See BANKRUPTCY, col. 58.

— Costs.

See CHOSE IN ACTION, col. 82.

JUDGMENT DEBTOR—"Travelling expenses"

—Return fare.

See COUNTY COURT, col. 120.

JUDGMENTS ACT, 1838.

See EMERGENCY LEGISLATION, col. 160.

JUDICIAL COMMITTEE (PRIVY COUNCIL)—

Appeal.

See AUSTRALIA; CANADA; CEYLON; CHARITY; PRIZE COURT; SOUTH AFRICA; STRAITS SETTLEMENTS.

Appeal—Restoration—Appeal allowed—Respondents unrepresented owing to fraud—Order in Council set aside—Practice.

A respondent to a pending appeal to the Privy Council from Bengal arranged with a person in Calcutta, who falsely represented himself to be agent for a firm of London solicitors that that firm should conduct the respondents'

JUDICIAL COMMITTEE (PRIVY COUNCIL)—
continued.

case, and supplied him with money to remit to the firm for that purpose. The pretended agent gave no instructions and misappropriated the money, in consequence of which the appeal was heard *ex parte*. The appeal was allowed, and on May 23, 1916, an Order in Council was made to that effect. The respondents in Jun., 1916, first became aware of what had taken place, and in Jul. petitioned that the judgment and Order in Council should be set aside and the appeal restored.

Upon the report and advice of the Judicial Committee, an Order in Council was made in accordance with the petition, subject to terms as to costs. *RAM NARAYAN SINGH v. ADHINDRA NATH MUKERJI* - J. C. [1917] A. C. 100 ; L. R. 44 Ind. Ap. 87 ; 86 L. J. (P. C.) 144

Criminal law—Practice of Judicial Committee—Police diaries—Code of Criminal Procedure (V. of 1898), s. 172, sub-s. 2.

The prerogative right to review the course of justice in criminal cases is exercised only where injustice of a serious and substantial character has occurred. The Judicial Committee does not advise interference merely because they themselves would have taken a different view of the evidence. Error in procedure may be of a character so grave as to warrant interference, as for instance where it deprives the accused of a constitutional or statutory right to be tried by a jury, or by some particular tribunal ; or it may have been carried to such an extent as to cause the outcome of the proceedings to be contrary to fundamental principles which justice requires to be observed. In a case of that character their Lordships will advise interference, although they think that the accused was guilty. Where, however, the error consists only in the improper admission of evidence, without which the same conclusion might properly have been arrived at, they will not so advise. The dominant question is whether substantial justice has been done.

The appellant was convicted by a Sessions Court of murder, and was sentenced to death. Their Lordships agreed with the view of the judge upon the evidence. The Court of the Judicial Commissioner dismissed an appeal, and confirmed the sentence, submitted to it under s. 374 of the Code of Criminal Procedure, 1898. That Court in its judgment, while agreeing with the view of the trial judge upon the evidence, went on to point out discrepancies between the evidence for the defence and statements in the police diaries connected with the case. By s. 172, sub-s. 2, of the Code any criminal Court may send for and use the police diaries, not as evidence, but to aid it in the inquiry or trial :—

Held, that the use made of the police diaries by the appellate Court was inconsistent with s. 172, sub-s. 2, of the Code and improper, but that, having regard to the evidence, and looking at the proceedings as a whole, substantial justice had been done and that an exercise of the prerogative should not be advised.

Queen-Empress v. Mannu (1897) I. L. R.,

JUDICIAL COMMITTEE (PRIVY COUNCIL)—
continued.

19 Allah. 390 (F. B.), as to the use of police diaries, approved. *DAL SINGH v. THE KING-EMPEROR* - J. C. L. R. 44 Ind. Ap. 137 ; 86 L. J. (P. C.) 140 ; 116 L. T. 621 ; 33 T. L. R. 249 ; 61 S. J. 351

See CANADA, col. 69.

Hearing—Notice as to [1917] W. N. 231

— New Zealand.

See CHARITY, col. 80.

— Prize Court—Special leave to appeal.

See PRIZE COURT, col. 331.

JUDICIAL DISCRETION—Divorce.

See DIVORCE, col. 143.

— Prize Court—Security for costs.

See PRIZE COURT, col. 331.

JUDICIAL TRUSTEES ACT, 1896.

See MORTGAGE, col. 282.

JURISDICTION—Admiralty.

See SHIPPING, col. 392.

— Appeal tribunal—Military service.

See ARMY, col. 45.

— Case stated—Non-service.

See ARMY, col. 45.

— Claimant out of—Prize Court—Security for costs.

See PRIZE COURT, col. 331.

— County court—Bankruptcy.

See BANKRUPTCY, col. 58.

— Friendly society—Committee of management—Dispute—Expulsion.

See FRIENDLY SOCIETY, col. 182.

— Husband and wife—Disputes as to property.

See HUSBAND AND WIFE, col. 195.

— Income Tax Commissioners.

See REVENUE, col. 359.

— Inferior Court—Habeas corpus.

See ARMY, col. 42.

— Justices.

See ARMY, col. 30, and *JUSTICES*, col. 237.

— Mandamus—Military law—Court of inquiry—Irregular proceedings.

See ARMY, col. 30.

— Prize Court.

See PRIZE COURT, col. 323.

— Rectification—Disentailing deed.

See TAIL, TENANT IN, col. 429.

— Secretary of State—Deportation order—Alien.

See ALIEN, col. 9.

— Settled land—High Court in England—Appointment of trustees—Irish estates.

See SETTLED LAND, col. 384.

— Small Barmote Court.

See MINES, col. 277.

— Special Court.

See SOUTH AFRICA (Bechuanaland Protectorate), col. 424.

JURISDICTION—*continued*.

— Trade name.

See TRADE NAME, col. 439.

— Tribunal of appeal—London Building Act, 1894.

See LONDON, col. 265.

— Workmen's compensation.

See WORKMEN'S COMPENSATION, col. 503.**JURY**—Failure to revise list—Verdict — Requête civil.*See* CANADA (Quebec), col. 76.

— Right of trial by—Rogue and vagabond.

See JUSTICES, col. 240.**JUSTICES.***Action Against. See below, Protection.**Appeal, col. 235.**Case Stated. See* ARMY.*Children, col. 236.**Claim of Right. See below, Jurisdiction.**Conviction, col. 236.**Jurisdiction, col. 237.**Limitation of Time, col. 238.**London. See* LONDON.*Military Service. See* ARMY.*Protection, col. 238.**Remand, col. 239.**Rogue and Vagabond. See below, Vagrancy.**Summary Jurisdiction. See below, Vagrancy.**Vagrancy, col. 239.***Action Against.***See below, Protection, col. 238.***Appeal.**

Conviction—Detention in reformatory school
— Mandamus—Dublin Police Act, 1837 (7 Will. 4 & 1 Vict. c. 25), s. 27—Summary Jurisdiction (Ireland) Act, 1851 (14 & 15 Vict. c. 92), s. 23—Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 78—Children Act, 1908 (8 Edw. 7, c. 67), s. 57—Criminal Justice Administration Act, 1914 (4 & 5 Geo. 5, c. 58), s. 43, sub-s. 11.

The right of appeal given by s. 43, sub-s. 11, of the Criminal Justice Administration Act, 1914, is not limited to cases where a fine or imprisonment is imposed.

An appeal lies to quarter sessions from a conviction and sentence by a Dublin police magistrate imposing detention in a reformatory under the provisions of the Children Act, 1908.

Semble, s. 43 of the Criminal Justice Administration Act gives the same right of appeal in Ireland as in England in all cases of summary conviction. *REX v. DUBLIN JJ.*

Div. Ct. (Ir.) [1917] 2 I. R. 45

JUSTICES—*continued*.**Case Stated.**

— Non-service.

See ARMY, col. 45.**Children.**

Youthful offenders—Maintenance at certified reformatory school—Place of residence—"Actual residence"—Children Act, 1908 (8 Edw. 7, c. 67), s. 74.

A child of thirteen, living with his father at S., constantly stole things, and was in the habit of running away from S. to his aunt's house at C., in another county. His aunt on several occasions sent him back to S. Ultimately he stole certain articles when residing with his aunt at C., for which offence he was arrested and committed to an industrial school, to be there maintained by the C. local education authority.

Upon an application to justices by the C. local education authority for an order transferring the liability to maintain the child to the local education authority of S., on the ground that S. was his place of residence, the justices upon the evidence before them found as a fact that the child came to C. from S. without his father's knowledge and consent, and that it was against his father's wishes that the child left his home at S. They made an order transferring the liability to maintain the child from the C. to the S. local education authority:—

Held, that there was evidence upon which the justices could find as they did that the child's residence was at his father's house at S., and that the order transferring his maintenance from the C. to the S. local education authority was properly made.

Stoke-on-Trent Corporation v. Cheshire C. C. [1915] 3 K. B. 699 distinguished. *WEST REDING OF YORKSHIRE C. C. v. COLNE CORPORATION*

Div. Ct. 15 L. G. R. 863; 82 J. P. 14; 62 S. J. 160

Claim of Right.

See below, Jurisdiction, col. 238.

Conviction.

Petty sessions—Certiorari—Uncertainty of conviction—Offences charged disjunctively, and conviction general—Fisheries (Ireland) Act, 1869 (32 & 33 Vict. c. 92), s. 16—"Erecting" or "making use of" a fixed engine.

A general conviction on a complaint which charges the deft. with "erecting" or "making use of" a fixed engine for the capture of salmon contrary to s. 16 of the Fisheries (Ireland) Act, 1869 (32 & 33 Vict. c. 92), is bad for uncertainty, since "erecting" denotes an offence distinct from "making use of" under that Act and section, and, consequently, two separate offences are disjunctively charged, the conviction not stating of which offence the accused was convicted.

Rea (Coyle) v. Tyrone JJ. 42 I. L. T. R. 26 distinguished. *REX (JAMES WHITE) v. CORKE JJ.* Div. Ct. (Ir.) [1917] 2 I. R. 310

JUSTICES—continued.**Jurisdiction.**

Court illegally constituted—Exclusion at adjourned hearing of a justice not a member of the bench before which the case began.

The rule laid down and applied in *Rex v. Derry JJ.* [1917] 2 I. R. 283, namely, that where a case has been opened at petty sessions and is adjourned after the whole or a substantial part of the evidence has been taken, exclusive cognizance to hear and determine is vested in the justices before whom the proceedings were opened, is not affected where, to convenience a party, the evidence taken at the earlier stages is repeated at the adjourned hearing. Such repetition, made for such purpose, does not make the adjourned hearing a hearing de novo so as to allow a justice, not a member of the bench before whom the proceedings began, without the consent of such bench, to hear and determine, and the exclusion of such justice from adjudication is not wrongful.

The mere presence on the bench, at an adjourned hearing of a part-heard case, of a justice not a member of the bench having exclusive jurisdiction, not objected to till a late stage of the hearing, is not sufficient proof of assent by the justices having exclusive cognizance to the participation of such justice in the hearing. Positive proof is required of such assent. *REX (DOBBYN) v. BELFAST JJ.* Div. Ct. (Ir.) [1917] 2 I. R. 297

Court improperly constituted—Petty sessions—Adjudication on a part-heard case by a justice not one of the justices before whom the case opened—Exclusive jurisdiction of the primary Court—Petty Sessions (Ireland) Act, 1851 (14 & 15 Vict. c. 93), s. 20.

It is a general rule, governing all judicial procedure, recognized by statute and authority, that the judges before whom a case begins are the Court to complete the hearing and determination; and that whether there be an adjournment of the hearing or not, no judge other than the judges before whom the proceedings began can, without the consent of such latter judges, intervene to hear or adjudicate. The act of a judge so intervening without consent would be a manifest abuse of judicial powers.

This rule is not altered or affected by the provisions as to adjournment contained in s. 20 of the Petty Sessions (Ireland) Act, 1851 (14 & 15 Vict. c. 93); and where a case is opened at petty sessions, and, after the whole or a substantial part of the evidence has been taken, is adjourned (either generally to the next sessions, or in particular to a specific day, hour, or place), no justice other than those before whom the proceedings opened should, without the consent of such latter justices, intervene to hear or determine the case at the adjourned hearing.

An adjudication by a justice so intervening in an adjourned hearing of a part-heard case without consent of the original bench can be quashed on certiorari as being made without or in excess of jurisdiction.

JUSTICES (Jurisdiction)—continued.

Every adjournment of a hearing is a continuation of the hearing, and must be referred to the jurisdiction of the original bench before which the case began. *REX v. LONDONDERY JJ.* *REX v. HARDY* - Div. Ct. (Ir.) [1917] 2 I. R. 283

Trespass—Claim of right—Summary Trespass Jurisdiction (Ireland) Act, 1851 (14 & 15 Vict. c. 92), s. 8—Claim to a right impossible in law.

Where a deft. to a summons seeks to justify the act complained of as done in exercise of a right which could not exist in law, he cannot have "fair and reasonable grounds for a bona fide claim of right," and the justices should convict.

Where a deft. so seeks to justify a trespass and the justices convict, their order, though bad in form, will not be quashed on certiorari, as the Court will in such case exercise its discretionary power, and refuse to make the order absolute.

The prosecutor was convicted of trespass on the lands of C. He admitted the entry on the lands, but claimed it was made in exercise of a right of way. The right claimed was a public right of way from a public road across C.'s lands to a private bathing-place on the land of R., C.'s neighbour. The justices stated in their order that the right claimed was not "substantially supported by evidence":—

Held, that the right claimed being one impossible in law, the conviction was good; and, even if the justices' order as made was bad in form, the Court in its discretion would not quash it on certiorari. *REX v. TYRONE JJ.* Div. Ct. (Ir.) [1917] 2 I. R. 96

Limitation of Time.

— Summary proceedings.

See *EMERGENCY LEGISLATION*, col. 167, and *LIMITATION, STATUTES OF*, col. 255.

London.

— Message establishment—Refusal of county council to register—Appeal—Duty of magistrate on hearing appeal. See *LONDON*, col. 267.

Military Service.

See *ARMY*, col. 30.

Protection.

Conviction confirmed by quarter sessions—Issue of distress warrants by justice—Conviction and confirmation quashed by High Court—Action against justice for illegal distress—Justices' Protection, Act, 1848 (11 & 12 Vict. c. 44), s. 6.

The plt. was summarily convicted by justices and fined, and on appeal to quarter sessions the conviction was confirmed. After the confirmation, the deft., a justice of the peace, issued distress warrants under which the plt.'s goods were seized. Subsequently the High Court made absolute rules nisi for a certiorari to quash the conviction and the confirmation on the ground that the original summons had not been properly served on the plt. The plt. then issued the writ in the present action against

JUSTICES (Protection)—*continued.*

the justice who issued the distress warrants, claiming damages for an illegal distress:—

Held, that the debt. was protected by s. 6 of the Justices' Protection Act, 1848, and that the action would not lie.

Decision of Low J. affirmed. *McVITTIE v. MARSDEN* - - - C. A. [1917] 2 K. B. 878; 86 L. J. (K. B.) 653; 15 L. G. R. 249; 116 L. T. 629; 81 J. P. 109

Remand.

Criminal law—Indictable offence—Power of Metropolitan police magistrate to remand accused on bail for more than eight days—Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 71), s. 36—Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 21—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), ss. 24, 54—Criminal Justice Administration Act, 1914 (4 & 5 Geo. 5, c. 58), s. 20.

Rule nisi for a mandamus directed to Mr. Garrett, one of the metropolitan police magistrates, and to one Charles Aughuet, calling upon them to show cause why the magistrate should not proceed to hear and determine an information preferred by Raymond De Dryver against Aughuet for having, on Jul. 31, 1917, at India House, Kingsway, London, unlawfully and feloniously attempted to murder him.

The Div. Ct. discharged the rule. In the particular circumstances the magistrate had a discretion to adjourn the hearing, and it could not be said that he had declined jurisdiction. As to the point that he could not adjourn the hearing for more than eight days, s. 36 of the Metropolitan Police Courts Act, 1839, empowered a metropolitan police magistrate, in the case of a prisoner charged with felony or misdemeanour, to remand him on bail without limit of time. The power there given to metropolitan police magistrates was not cut down by s. 21 of the Indictable Offences Act, 1848, or by ss. 24 or 54 of the Summary Jurisdiction Act, 1879, or by s. 20 of the Criminal Justice Administration Act, 1914. The magistrate therefore had power to remand Aughuet on bail for a period exceeding eight days. *REX v. GARRETT. Ex parte DE DRYVER* Div. Ct. [1917] W. N. 301; 84 T. L. R. 13; 62 S. J. 104

Rogue and Vagabond.

See below, Vagrancy, col. 240.

Summary Jurisdiction.

See below, Vagrancy, col. 240.

Vagrancy.

Charge of frequenting street with intent to commit a felony—"Suspected person or reputed thief"—Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 4.

A person may be convicted as a rogue and vagabond under s. 4 of the Vagrancy Act, 1824, on a charge of frequenting a public place for the purpose of committing a felony, without its being shown that he has been previously convicted, or that he has been a suspected person or reputed thief or has been known to have a bad character before the day on which the

JUSTICES (Vagrancy)—*continued.*

incidents take place which lead to his arrest. *HARTLEY v. ELLNOR* - Div. Ct. 86 L. J. (K. B.) 938; 15 L. G. R. 775; 117 L. T. 304; 81 J. P. 201

Fortune telling—Intent to deceive—Ingredient of offence—Evidence for defence—Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 4.

On a charge of pretending to tell fortunes contrary to s. 4 of the Vagrancy Act, 1824, intent to deceive is one of the ingredients of the offence, and the person charged, who sets up the defence of an honest belief in his or her own supernormal powers, is entitled to call evidence of witnesses to prove that he or she honestly believed himself or herself to possess the powers claimed to be exercised and had no intent to deceive or impose on the public.

So *held* by Darling J. and Sankey J., Avory J. dissenting.

Hlg. v. Entwistle (1899) 1 Q. B. 846; 68 L. J. (Q. B.) 580 discussed and explained. *DAVIS v. CURRY* - - - Div. Ct. 15 L. G. R. 923

Summary jurisdiction—Soliciting by male person—Right to trial by jury—Vagrancy Act, 1898 (61 & 62 Vict. c. 39), s. 1—Criminal Law Amendment Act, 1912 (2 & 3 Geo. 5, c. 20), s. 7, sub-s. 2.

A person charged before a Court of summary jurisdiction as a rogue and vagabond under s. 1 of the Vagrancy Act, 1898, has no right to claim to be tried by a jury under s. 17 of the Summary Jurisdiction Act, 1879, notwithstanding that the term of imprisonment which may be imposed has been increased from three to six months by s. 7, sub-s. 1, of the Criminal Law Amendment Act, 1912. *REX v. DICKINSON. Ex parte GRANDOLINI* - Div. Ct. [1917] 2 K. B. 393; 86 L. J. (K. B.) 1040; 117 L. T. 189; [1917] W. N. 166; 33 T. L. R. 347; 81 J. P. 209

JUSTIFICATION — Dismissal — Servant — Commission—Salary for current period. See MASTER AND SERVANT, col. 272.

KING'S ENEMIES—Adhering to. See CRIMINAL LAW, col. 133.

KING'S PROCTOR—Plea—Answer to. See DIVORCE, col. 146.

KNOWLEDGE AND APPROVAL — Will — Presumption of. See PROBATE, col. 334.

LADING—Bill of. See SHIPPING, col. 393.

LAND—Compulsory purchase. See COMPENSATION, col. 101.

— Occupier — Highway — Obstruction — Tree fallen across highway—Liability. See HIGHWAY, col. 191.

— Sale of—Alien enemy—Power of attorney. See ALIEN ENEMY, col. 20.

LAND TAX—Redemption. See REVENUE, col. 361.

LANDLORD AND TENANT.*Agricultural Holding*, col. 241.*Assignment*. See below, *Lease*.*Covenant*. See below, *Lease*.*Distress*, col. 242.*Forfeiture*. See below, *Lease*.*Furnished Lodgings*, col. 243*Holding Over*. See below, *Lease*.*Insurance*. See below, *Lease*.*Landlord's Property Tax*, col. 243*Lease*.*Covenant*.*Assignment*, col. 244.*Insurance*, col. 245*Quiet Enjoyment*, col. 246*Renewal*, col. 246.*Repair*, col. 247.*Statutory Expenses*, col. 249.*Term*.*Holding Over*, col. 249.*Reversionary Lease*, col. 250.*Uncertainty*, col. 250*Lodger*. See above, *Furnished Lodgings*.*Nuisance*. See *NUISANCE*.*Re-entry*. See *CONVERSION*.*Rent, Increase of*. See *EMERGENCY LEGISLATION*.*Repair*. See above, *Lease*.*Undertenant*. See above, *Distress*.*Waiver*. See above, *Lease*.**Agricultural Holding.**

Lease—"In use or cultivation as a market garden"—*Planting of fruit trees*—*Consent of landlord*—*Compensation*—*Agricultural Holdings Act, 1908* (8 *Edw.* 7, c. 28), s. 2; s. 24, sub-s. 2.

MORSE v. DIXON - C. A. [1917] W. N. 274; 117 L. T. 590

Tenancy agreement—*Prohibition against selling off produce*—*Powers of tenant*—*Last year of term*—*Agricultural Holdings Act, 1908* (8 *Edw.* 7, c. 28), s. 26—*Contract for sale*—*Material date*—*Sale of Goods Act, 1893* (56 & 57 *Vict.* c. 71), s. 4—*Date from which tenancy commences*.

The provisions of s. 26 of the *Agricultural Holdings Act, 1908*, giving the tenant power to dispose of the produce of his holding, do not apply to the year before the expiration of the tenancy. Accordingly, where a tenancy agreement prohibits the tenant from selling produce off his holding, he cannot by virtue of anything contained in the section sell off during the last year of his tenancy the produce of any previous year.

In a dispute between a landlord and his tenant as to the date upon which the latter sold produce of his holding to a third party:—

Held, that the material date was the actual date when the contract for sale was made and

LANDLORD AND TENANT (Agricultural Holding)—continued.

not the date when, as between the contracting parties, the contract for sale became enforceable within s. 4 of the *Sale of Goods Act, 1893*.

A tenancy or term was granted "from" Mar. 25:—

Semble, following *Ackland v. Lutley* (1839) 9 Ad. & E. 879 and *Sidebotham v. Holland* [1895] 1 Q. B. 378, that the tenancy commenced at midnight on Mar. 25.

On this point the head-note to *Sidebotham v. Holland* (supra) goes beyond the judgment of the Court and is misleading. *MEGGESON v. GROVES* - Peterson J. [1917] 1 Ch. 158; 86 L. J. (Ch.) 145; 115 L. T. 683; [1916] W. N. 378; 61 S. J. 115

Assignment.

See below, *Lease*, col. 244.

Covenant.

See below, *Lease*, col. 244.

Distress.

Postponement of landlord's right to distrain—*Subsequent removal of goods by purchaser from tenant*—*Cause of action*—*Courts (Emergency Powers) Act, 1914* (4 & 5 *Geo.* 5, c. 78), s. 1.

DICKINSON v. R. SIMMONDS & SON

Bailhache J. [1917] W. N. 256

Seizure of privileged goods—*Value of privileged goods left after distraint*—*Onus of proof*—*Law of Distress Amendment Act, 1888* (51 & 52 *Vict.* c. 21), s. 4—*County Courts Act, 1888* (51 & 52 *Vict.* c. 43), s. 147.

Appeal from Whitechapel County Court.

The plt., a tailor's presser, was tenant to the deft. of a house in the Mile End Road, at a weekly rental of 13s. On Nov. 21, 1916, the rent was in arrear to the amount of 4l. 13s. The deft. caused a distress to be put in for the rent, and among the goods seized was a sewing-machine. The plt. then brought this action, claiming that the sewing-machine had been wrongfully distrained in contravention of s. 4 of the *Law of Distress Amendment Act, 1889*. At the trial the county court judge, at the close of the plt.'s case, entered judgment for the deft. on the ground that the plt. had failed to give evidence that the deft. did not leave 5l. worth of bedding or wearing apparel on the premises after the distress. The plt. appealed.

The Div. Ct. *held*, affirming the county court judge, that the onus lay upon the plt. to prove that the deft. had not left 5l. worth of wearing apparel, bedding, or tools of trade, upon the premises. *GONSKY v. DURRELL*

Div. Ct. [1917] W. N. 357; 62 S. J. 175

Undertenant's goods—*Full annual value of premises*—*Evidence*—*Law of Distress Amendment Act, 1908* (8 *Edw.* 7, c. 53), s. 1.

The deft. let a house and premises to S. at 50l. a year, S. covenanting to do repairs and pay rates and taxes. S. sublet the house to the plt. at 8s. a week, part of the agreement between S. and the plt. being that S. should remain in the house as a boarder and pay the plt. 1l. a week for board and lodging, and S.

LANDLORD AND TENANT (Distress)—*contd.*

continued to be liable for the rates, taxes, and repairs. The deft. afterwards levied a distress for rent owed to him by S. and seized furniture which was claimed by the plt. In an action by the plt. against the deft. for the value of the goods distrained upon, the plt. contended that she was protected from distress by s. 1 of the Law of Distress Amendment Act, 1908, as being an undertenant liable to pay a rent amounting to the full annual value of the premises. The jury found that the plt. was paying the full annual value, and judgment was given for the plt. :—

Held, on the evidence, that, there being no evidence that the plt. was paying the full annual value within the section, judgment must be entered for the deft.

Appeal from judgment of McCardie J. (33 T. L. R. 117) allowed. *PARSONS v. HAMPBRIDGE* - - - C. A. 33 T. L. R. 346

Forfeiture.

See below, Lease, col. 248.

Furnished Lodgings.***Implied warranty as to fitness of tenant.***

There is no implied warranty on the taking of furnished lodgings that the intending tenant is a fit and proper person to occupy them and is not suffering from an infectious disease. *HUMPHREYS v. MILLER* - - - C. A. [1917]

2 K. B. 122; 86 L. J. (K. B.) 1111; 116 L. T. 668; 33 T. L. R. 115

Holding Over.

See below, Lease, col. 249.

Insurance.

See below, Lease, col. 245.

Landlord's Property Tax.

Arrears of rent—Insolvent company—Receiver for debenture-holders—Agreement to pay rent during occupation—Deduction of tax on arrears of previous financial year—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 60, Sched. A, No. IV., Rule 9—Income Tax Act, 1853 (16 & 17 Vict. c. 34), ss. 35, 40—Revenue (No. 1) Act, 1864 (27 & 28 Vict. c. 18), s. 15.

On taking possession of an insolvent co.'s premises a receiver and manager appointed in May, 1916, in a debenture-holders' action agreed with the landlord to pay rent during his occupation at the rate reserved by the leases.

Being subsequently required to pay landlord's property tax for the financial year 1915-16 anterior to his appointment, for which year no rent had been paid, the receiver paid the tax and deducted it from his first payment of rent in the current financial year 1916-17.

Held, (a) that the deduction was lawful under the Income Tax Act, 1842, s. 60, Sched. A, No. IV., Rule 9, and the Income Tax Act, 1853, s. 40, and (b) that it was not precluded by the agreement.

In re Sturmeys Motors, Ltd. [1913] 1 Ch. 16 applied. *In re HAYMAN, CHRISTY & LILLY, LD.* (No. 2). *CHRISTY v. THE CO.* - *Astbury J.* [1917] 1 Ch. 545; 86 L. J. (Ch.) 389; 116 L. T. 487; [1917] W. N. 75

LANDLORD AND TENANT (Landlord's Property Tax)—*continued.*

Payment of rent—Deduction of property tax by tenant—Payment by tenant to collector of tax—Production of collector's receipt to landlord—Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 4—Revenue (No. 1) Act, 1864 (27 & 28 Vict. c. 18), s. 15.

Where a tenant covenants with his landlord to pay the rent of the demised premises, the landlord is entitled, before being called upon to allow, by way of deduction from or discharge of rent due from the tenant, a payment of property tax made by the tenant to the Inland Revenue authorities, to see the collector's receipt for the payment of the tax. The landlord is not bound to go to the tenant for the purpose of inspecting the receipt; it is the duty of the tenant to take it to the landlord. *NORTH LONDON AND GENERAL PROPERTY CO. v. MOY, LD.* - - - *Low J.* [1917] 2 K. B. 617; 86 L. J. (K. B.) 1302; 117 L. T. 370; [1917] W. N. 217; 33 T. L. R. 442

Lease.***Covenant.******Assignment.***

Covenant by lessee for self and assigns not to sub-let without lessor's consent—Sub-lease—Further sub-lease by sub-lessee without consent—Liability of lessee.

Where a lessee, who has covenanted for himself and his assigns that he will not sub-let or part with possession of the premises without the consent of the lessor, sub-lets them, the lessor, cannot, if the sub-lessee further sub-lets without his consent, complain of such further sub-letting as a breach of covenant by the lessee. A sub-lessee is not for that purpose an assign.

C. let premises to W., who covenanted for himself and his assigns that he would not sub-let or part with possession without the consent of C. W. sub-let the premises to B., who similarly covenanted not to sub-let or part with possession without the consent of W. B. sub-let to F. with the consent of W. but without the consent of C. :—

Held, that the fact of W. consenting to the sub-lease to F., and thereby allowing F. to take possession of the premises, did not amount to a parting with the possession by W. or his assign so as to constitute a breach of his covenant not to part with the possession without C.'s consent. *MACKUSICK v. CARMICHAEL*

Atkin J. [1917] 2 K. B. 581; 117 L. T. 372; [1917] W. N. 218; 33 T. L. R. 497

Covenant not to assign without licence—Assignment of lease to a company—Voluntary liquidation—Assignment by liquidator without licence—Breach of covenant—Measure of damages.

A co. were assignees of a lease containing a covenant by the lessee not to assign the demised premises without the lessors' previous licence and consent in writing, not to be unreasonably withheld in case of a respectable and responsible person being offered as tenant. The co. went into voluntary liquidation, in which the liquidator without the licence or

LANDLORD AND TENANT (Lease)—*continued*.
consent of the lessor assigned the lease without offering a responsible person as tenant:—

Held, that this constituted a breach of the covenant not to assign.

In re Riggs [1901] 2 K. B. 16 distinguished.

Held, also, that the lessor electing to avoid the lease could assess once for all the amount which he had lost by having an insolvent tenant instead of the co., and could prove for that amount in the liquidation, and was not bound to wait and prove for each quarter's rent as it fell due. *COHEN v. POPULAR RESTAURANTS, LD.*

Rowlatt J. [1917] 1 K. B. 480; 86 L. J. (K. B.) 617; 116 L. T. 477; 33 T. L. R. 107

Insurance.

Aircraft risks—Covenant to insure against loss or damage by fire—Policy to be effected in named company—Usual policy at date of lease—War risks excepted—Construction of covenant.

A covenant by a lessee to insure with a named co. or a specified class of cos. by means of a policy against loss or damage by fire is a covenant to effect such a policy as is the usual policy of the cos. in question at the date of the lease or else such a policy as may from time to time be usual during the currency of the lease, and therefore the covenant does not bind the lessee to insure against loss or damage from fire caused by hostile aircraft, where neither at the date of the lease nor during its currency did any co.'s policy of insurance against fire cover such loss or damage.

Enlayde, Ltd. v. Roberts [1917] 1 Ch. 109 distinguished. *URJOHN v. HITCHENS. URJOHN v. FORD* - - Roche J. [1917] W. N. 356; 34 T. L. R. 79; 62 S. J. 143

Insurance against "loss or damage by fire"—*Insurance against fire except when caused by "foreign enemy"*—*Alleged custom as to such insurance being a compliance with the covenant.*

In a lease granted by R. in 1913, the lessee covenanted to repay R. the sums expended by R. in insuring the demised property against "loss or damage by fire"; to keep the property in repair "except in case of destruction or damage by fire"; and at the expiration of the lease to give up to the lessor, "damage by fire excepted," the demised property in good repair. R. covenanted at all times during the term to insure and keep insured the demised property "against loss or damage by fire in some insurance office of repute" in a named sum, and further that, in the case of destruction of or damage to the demised premises by fire, she would "lay out all moneys received in respect of such insurance in rebuilding or reinstating . . . the premises so destroyed or damaged, and in case such moneys" should "be insufficient for such purpose, she" would "make good such insufficiency out of her own moneys." A policy of insurance against fire was effected in the names of the freeholders, R., and the lessee of R. in an office of repute whose policies, including the one in the present case, exempted the office from liability for "loss or damage by or happening through" certain events, including "invasion, foreign enemy," and "military

LANDLORD AND TENANT (Lease)—*continued*.
or usurped power." In 1915 the demised property was destroyed by fire caused by incendiary bombs dropped by enemy aircraft. The Court was satisfied that, although policies of insurance against fire issued by offices of repute always exempted the offices from liability for fires caused by military operation, their exemption clauses differed considerably in other respects:—

Held, that the words "loss or damage by fire" must be construed in their strict and primary and not in any secondary sense, and that the lessor was liable under her covenant for the loss which had occurred.

Proposition II. in Wigram's *Extrinsic Evidence in Aid of the Interpretation of Wills*, 3rd ed., p. 17, approved and applied to the construction of documents other than wills. *ENLAYDE, LD. v. ROBERTS* - - Sargant J. [1917] 1 Ch. 109; 86 L. J. (Ch.) 149; 115 L. T. 901; [1916] W. N. 376; 33 T. L. R. 52; 61 S. J. 86

Quiet Enjoyment.

Construction—"Claiming from or under."

By an indenture in 1908 Daniel Griffiths and Robert Martin, the plts., trustees of the will of William Webb, who had died prior to the lease hereinafter mentioned, demised to the deft. a piece of land, with the messuage then in course of erection on it, for a term of ninety-nine years from Jun. 24, 1904, at a yearly rent of 1*l.* The deft. covenanted to complete the messuage and keep it in repair, and yield it up in good repair at the end of the term. Mines and minerals, with liberty of working and liberty of watercourse from adjoining property, were excepted and reserved. The lease contained this covenant: "The lessors as to their own respective acts and deeds but not further or otherwise do hereby respectively covenant with the lessee that, the lessee paying the rent hereby reserved and observing and performing the covenants and conditions herein contained and on his part to be observed and performed, shall and may quietly possess and enjoy the said premises during the said term without any lawful interruption from or by the lessors or any person rightfully claiming from or under them." The mines underlying the demised premises had by an indenture in 1896 been demised by the then trustees of the will, the plt. Daniel Griffiths and H. J. Shenton, who was succeeded by the plt. R. Martin, for a term of sixty years to a colliery co., which was empowered to work the minerals. The messuage was completed, and the deft. alleged that it suffered damage by subsidence. The plts. issued a summons to determine, upon the assumption that the damage (if any) was caused by proper working by the colliery co., whether the plts. or either of them were or was (irrespective of the exception and liberties in the surface lease) liable for such damage.

Younger J. held that Griffiths alone was liable. *In re GRIFFITHS. GRIFFITHS v. RIGGS* Younger J. [1917] W. N. 51; 61 S. J. 268

Renewal.

Vendor and purchaser—Title—Lapse of time
—*Validity.*

LANDLORD AND TENANT (Lease)—continued.

A lease contained a covenant for renewal every thirty years during a period of 999 years, no time being fixed within which the lease was to be renewed. In 1913, nineteen years after the expiration of the previous lease, a tenant for life of the premises granted a renewal to the lessee, who had remained in possession, paid the rent, and observed the conditions of the lease. On the sale of the lessee's interest the purchaser challenged the validity of the renewal on the ground that it was out of time:—

Held, that the mere lapse of time did not render the renewal inoperative, and that, except in a case where time was of the essence of the contract, no distinction could be drawn between the powers of an absolute owner and those of a limited owner to grant a renewal. **ALLEN v. MURPHY** - - C. A. (Ir.) [1917] 1 I. R. 484

Repair.

Determination of lease—Covenant to do specific repairs in a particular year—Notice by lessee to terminate lease during currency of year—Liability of lessee under the covenant.

Where a lease contains a covenant to execute specific repairs in a particular year, if the lease shall be then subsisting, the obligation to perform the covenant attaches as soon as the year begins, and the fact that the lease is determined by the lessee by notice expiring before the end of the year does not relieve the lessee of his obligation to perform the covenant.

A lease contained (inter alia) the following covenant by the lessee: "And will in the year 1909, and also in the year 1916, if this lease shall so long last paint varnish and grain all the inside wood and iron work usually painted varnished or grained of the said demised premises with three coats of good oil and white lead paint in a proper and workmanlike manner."

The lessee died in 1915, and his executors, under a power in that behalf contained in the lease, gave six months' notice to the lessor to determine the lease on Mar. 1, 1916. On the determination of the term, the covenant not having been performed, the lessor claimed damages for the breach of it:—

Held, that the executors were liable. **KIRK-LINTON v. WOOD** - Lush J. [1917] 1 K. B. 332; 86 L. J. (K. B.) 319; 115 L. T. 920; [1916] W. N. 431; 33 T. L. R. 108; 61 S. J. 147

Determination of lease—Lessee—Breach—Power for lessee to determine lease—Notice to determine—Condition precedent—Repairs commenced before but completed shortly after expiration of notice—Invalid notice.

A lease for a term of years contained the usual covenant by the lessee to repair and deliver up in good and substantial repair the demised premises, with a proviso that if the lessee should desire to determine the lease at the expiration of the third, seventh, and fourteenth year of the term and should of such desire give six months' previous notice in writing to the lessor, "and shall pay all the rent and perform and observe all the covenants hereinbefore reserved and contained and on the part of the lessee to be paid, performed and observed up to such determination, then and

LANDLORD AND TENANT (Lease)—continued.

in such case immediately after the expiration of the said term of three, seven or fourteen years as the case may be this lease and the term hereby granted shall absolutely cease and determine but without prejudice to the remedies of either of the parties hereto against the other in respect of any antecedent claim or breach of covenant." Under this proviso the lessee gave the lessor a six months' previous notice in writing to determine the lease at the expiration of the seventh year of the term and, the premises being out of repair, commenced repairs shortly before and completed them a few days after the date for the determination of the lease:—

Held, that the performance of the covenant to repair was a condition precedent to the determination of the lease notwithstanding the qualifying words "without prejudice," &c., concluding the proviso; and that, the condition not having been fulfilled, the notice was bad and the lease had not determined.

Grey v. Friar (1854) 4 H. L. C. 565 followed. **BURCH v. FARROWS BANK, LD.** - Neville J. [1917] 1 Ch. 606; 86 L. J. (Ch.) 400; 117 L. T. 8; [1917] W. N. 112; 61 S. J. 383

Qualification—Lessee "being allowed all necessary materials" for repair—Construction—Qualification of lessee's covenant, not covenant by lessor—Custom—Inconsistency with lease.

In the lease of a farm for twenty-one years the lessee covenanted with the lessor that he would "from time to time during the said term at his own cost (being allowed all necessary materials for this purpose (to be previously approved in writing by the lessor) and carting such materials free of cost a distance not exceeding five miles from the farm) when and so often as need shall require well and substantially repair and maintain the farm house &c. to the said premises belonging":—

Held by Viscount Reading C.J. and Ridley J., Lord Coleridge J. dissenting, that there was no covenant by the lessor to supply materials necessary for the proper repair and maintenance of the demised premises, but only a qualification of or condition precedent to the lessee's liability to repair.

Held, further, that evidence of a custom that "the landlord provides the tenant with materials necessary for the proper repair and maintenance of the demised premises and the tenant repairs and maintains the same with such materials and provides the necessary cartage" was inadmissible inasmuch as it would be inconsistent with the terms of the lease which dealt with this subject in a particular manner. **WESTACOTT v. HAHN** - Div. Ct. [1917] 1 K. B. 605; 86 L. J. (K. B.) 956; 116 L. T. 732; [1917] W. N. 54; 33 T. L. R. 193; 61 S. J. 253

Waiver—Covenant to repair, Breach of—Lessee—Acceptance of rent after notice to repair—Waiver of forfeiture—Continuing breach—Necessity of fresh notice—Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 14, sub-s. 1.

LANDLORD AND TENANT (Lease)—continued.

The deft. was tenant to the plts. of a house under a lease containing a covenant to repair. The house being out of repair, the plts. served the deft. with a notice under the Conveyancing Act, 1881, of the breach of the covenant, together with a requisition to repair within three months and a schedule of the repairs required to be done. Subsequently the plts. accepted from the deft. a half-year's rent which had accrued due since the date when the notice expired. In an action to recover possession of the premises in respect of the continuing breach of covenant arising out of their non-repair since the date when the rent so accepted became due:—

Held, that, as the only object of the notice under the Act was to inform the tenant what she was required to do, no new notice was necessary to support the action, even though so long an interval as twelve months had elapsed between the date of the expiry of the notice and the commencement of the action, and though the tenant had done a portion of the required repairs in that period, so that the physical condition of the premises which she was required to make good was not the same when the action was brought as when the notice was given. The tenant knew what she had been required to do and what she had left undone, and that was sufficient to keep the notice applicable.

Penton v. Barnett [1898] 1 Q. B. 276 and *Guillemard v. Silverthorne* (1908) 99 L. T. 584 considered. *NEW RIVER CO. v. CRUMPTON*

Rowlatt J. [1917] 1 K. B. 762; 86 L. J. (K. B.) 614; 116 L. T. 569; [1917] W. N. 78

Statutory Expenses.

Covenant by tenant to pay expenses required by future statute—Provision of fire escape—Apportionment of expense—"Just and equitable in the circumstances of the case"—London Building Acts (Amendment) Act, 1905 (5 Edw. 7, c. ccix.), s. 20.

MONRO v. LORD BURGHCLERE

Div. Ct. [1917] W. N. 387; 34 T. L. R. 131

Term.**Holding Over. •**

Expiration of term—Lease—Tenancy from year to year—No agreement in writing—Assignee of reversion—Right to sue on covenants in lease—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 10.

By s. 10 of the Conveyancing Act, 1881, "Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced, and

LANDLORD AND TENANT (Lease)—continued.

taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased";—

Held, that the section does not apply to a lease which is not in writing.

Where, therefore, the tenant of a house for a term under a lease by deed containing a covenant to repair held over after the expiration of the term, no further document being signed, as tenant from year to year upon the terms of the expired lease so far as they were applicable to such a tenancy, and the reversion was subsequently assigned:—

Held, that the assignee of the reversion was not entitled to sue the tenant for breaches of the express covenant to repair contained in the expired lease; nor was he entitled to demand that the tenant should execute a lease so as to enable him to sue upon the covenant. *BLANE v. FRANCIS* - - - C. A. [1917] 1 K. B. 252;

86 L. J. (K. B.) 364; 115 L. T. 850; [1916] W. N. 394

Reversionary Lease.

Interesse termini—Rule against perpetuities—Land registry.

MANN, CROSSMAN & PAULIN, LD. v. HIND

Neville J. [1917] W. N. 324;

34 T. L. R. 39;

62 S. J. 54

Uncertainty.

Rule as to time certain—Lease for period of war—Intention of parties.

The plts. in Mar., 1916, informed the deft. that they would let certain premises to him "for the period of the war, the rent payable weekly," and they said that they did not intend that he should be subject to a week's notice. The deft. agreed to these terms, and the parties entered into a formal agreement by which the plts. let the premises to the deft. "for the period of the war at a weekly rent of 3*l.* 5*s.* 0*d.*, payable weekly." In an action by the plts. to recover possession on the footing that the agreement was void for uncertainty as a lease for years and only created a weekly tenancy or a tenancy at will:—

Held, that even if a lease for years must be for a period of time which was certain or which could be rendered certain, yet as the intention of the parties was that the tenancy should be for the period of the war, and as this intention could have been carried out by a lease extending over a long period but terminable at the end of the war, effect must be given to that intention and the plts. could not recover. *GREAT NORTHERN RY. CO. v. ARNOLD* - *Rowlatt J.*

33 T. L. R. 114

Lodger.

See above, Furnished Lodgings, col. 243.

Nuisance.

— *Overhanging trees—Lessor's duty to lessee.*

See NUISANCE, col. 291.

Re-entry.

See CONVERSION, col. 115.

LANDLORD AND TENANT—*continued.***Rent, Increase of.***See* EMERGENCY LEGISLATION, col. 171.**Repair.***See* above, **Lease**, col. 247.**Undertenant.***See* above, **Distress**, col. 242.**Waiver.***See* above, **Lease**, col. 248.**LANDLORD'S PROPERTY TAX.***See* LANDLORD AND TENANT, col. 243.**LANDS**—Railway—Exemption from taxation
—Canada (British Columbia).*See* CANADA, col. 70.**LAST YEAR OF TERM.***See* LANDLORD AND TENANT, col. 241.**LATENT TUBERCULOSIS**—Accident.*See* INSURANCE (ACCIDENT), col. 201.**"LAWFULLY SWORN AS A WITNESS."***See* CRIMINAL LAW, col. 132.**LAY DAYS**—Demurrage.*See* SHIPPING, col. 398.**LAY READER**—Church of England.*See* ARMY, col. 35.**LEASE.***See* CONVERSION, col. 115, LANDLORD AND TENANT, col. 244, and SPECIFIC PERFORMANCE, col. 425.**LEASEHOLD**—Contingent bequest—Destination of profits till vesting.*See* WILL, col. 472.**LEAVE**—Action.*See* EMERGENCY LEGISLATION, col. 160.**LEGACY**—Will.*See* WILL, col. 472.**LEGACY DUTY.***See* WILL, col. 465.**LEGAL ASSIGNMENT**—Chose in action.*See* CHOSE IN ACTION, col. 82.**LEGAL PROCEEDINGS AGAINST ENEMIES ACT, 1915.***See* ALIEN ENEMY, col. 14.**LEGALITY**—Company—Objects.*See* COMPANY, col. 92.**LEGISLATION**—Emergency.*See* EMERGENCY LEGISLATION.

—Retrospective effect of.

See REVENUE, col. 359.**LEGITIMACY**—*Question of fact*—Judge of first instance reversed by C. A.—Decision of C. A. upheld.*In this legitimacy suit, in which the judge of first instance gave judgment for the infant***LEGITIMACY**—*continued.**petitioner, but ordered each of the parties (other than the Att.-Gen.) to pay his own costs (31 T. L. R. 246), the C. A. reversed the judgment for the petitioner and ordered the infant and his guardian to pay the costs both in the C. A. and in the Court below (32 T. L. R. 364). The H. L. upheld the decision of the C. A. and dismissed the appeal to that House with costs to be paid personally by the guardian ad litem or next friend. SLINGSBY v. ATT.-GEN.**H. L. (E.) 33 T. L. R. 120***LESSEE AND LESSOR.***See* LANDLORD AND TENANT, col. 244.**LETTER MAIL**—Seizure from—German Government bonds.*See* PRIZE COURT, col. 324.**LEX LOCI.***See* CANADA, col. 70.**LIABILITY**—Limitation of.*See* SHIPPING, col. 394.**LIBEL.***See* DEFAMATION, col. 137.**LICENCE (INTOXICATING LIQUORS).***See* LICENSING ACTS, col. 252.**LICENCE (MARRIAGE)**—Registrar.*See* DIVORCE, col. 146.**LICENCE (TRADE)**—Export.*See* CONTRACT, col. 107, and PRINCIPAL AND AGENT, col. 313.

—Trade—Prize Court.

See PRIZE COURT, col. 322.**LICENSING ACTS**—Emergency Legislation.*See* EMERGENCY LEGISLATION, col. 162.*Licence—Renewal—Notice of intention to oppose—Service on "the holder thereof"—Service on holder of protection order, who became holder of licence before application for renewal—Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 16, sub-s. 3—Costs payable by licensing justices.**The Licensing (Consolidation) Act, 1910, s. 16, sub-s. 3, provides that, "subject to the provisions of this section, the licensing justices shall not, where the holder of a justices' licence applies for the renewal of his licence, entertain any objection to . . . the renewal thereof unless written notice of an intention to oppose the renewal of the licence stating in general terms the grounds on which the renewal is opposed, has been served on the holder thereof not less than seven days before the commencement of the general annual licensing meeting."**More than seven days before the general annual licensing meeting notice of intention to oppose the renewal of the justices' licence in respect of licensed premises was served on J., who was carrying on the business on the premises under a protection order. Before the general annual licensing meeting the licence was duly transferred to J., and at that meeting he applied for the renewal of his licence:—**Held, that service of the notice upon J., who*

LICENSING ACTS—continued.

was the holder of the licence when the application for renewal was made but not when the notice of opposition was served, was not service on "the holder thereof" within the meaning of sub-s. 3 of s. 16 of the Act.

Decision of Div. Ct. [1917] 1 K. B. 148 reversed.

Observations as to payment of costs by licensing justices. *JONES v. HATHERTON*

C. A. [1917] 2 K. B. 412; 86 L. J. (K. B.) 1206; 116 L. T. 657; [1917] W. N. 121; 61 S. J. 383; 81 J. P. 101

Offences—Conviction, Record of—Procedure—Evidence—Indorsement of conviction—Decision of majority of justices.

The K. B. D. will not on an application for certiorari to quash a conviction, on the ground that the decision as recorded was not the decision of the Court, go behind the record of the conviction.

Where out of a Court consisting of five justices one justice only is recorded as dissenting from the decision of the Court, the K. B. D. is bound by the record, and cannot receive evidence to prove that the decision of the Court as appearing by the record is not the decision of the majority of the justices.

Quære, whether in a licensing prosecution, where a deft. is convicted of an offence which may be indorsed, all the justices or the convicting justices only ought to determine the question of indorsement. *REX v. TYRONE JJ.*

Div. Ct. (Ir.) [1917] 2 I. R. 437

Offences—Premises open during prohibited hours—Evidence—Prima facie case—Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 61.

H. was the holder of a six-day licence. On a certain Sunday morning the police observed a number of persons being admitted to the licensed premises, and leaving after an interval of from three to twelve minutes. The only one of these persons who was called as a witness stated in evidence that when he entered the premises he called for intoxicating liquor, but that H. refused to serve him. The justices held that a prima facie case had been made out against H. of keeping open the premises for the sale of intoxicating liquors during part of the time at which the premises were directed to be closed, but H. refused to give or to call any evidence:—

Held, that the evidence was equally consistent with innocence as with guilt, and therefore that a prima facie case had not been established against H., and that the justices were not entitled to draw any inference of guilt from his refusal to give evidence. *HARRIES v. THOMAS*

Div. Ct. 86 L. J. (K. B.) 812; 117 L. T. 123; [1917] W. N. 146; 81 J. P. 172

LIEN—*Hire-purchase agreement—Contract by hirer to keep hired chattel in repair—Chattel sent to repairer—Lien as against owner for cost of repairs.*

By a hire-purchase agreement the plt. let a motor car to a person who agreed to "keep the car in good repair and working condition"; and the car was to be the property of the plt.

C.C.D.

LIEN—continued.

until all the instalments were paid. During the currency of the agreement the car was injured by an accident and the hirer sent it to the defts. to be repaired. The defts. were informed that the car was held on a hire-purchase agreement. After the car was sent to the defts., and before the contract for the repairs was made, default was made in payment of an instalment under the hire-purchase agreement. The plt. did not terminate the agreement until after the repairs had been commenced, when he demanded the car from the defts., but did not tender the amount then due for the cost of the repairs. The defts. refused to deliver it up, claiming a lien on the car for the cost of the repairs; and the repairs were subsequently completed:—

Held, that the defts. had a lien on the car as against the plt. for the cost of the repairs.

Keene v. Thomas [1905] 1 K. B. 136 approved. *GREEN v. ALL MOTORS, LTD.*

C. A. [1917] 1 K. B. 625; 86 L. J. (K. B.) 590; 116 L. T. 189; [1917] W. N. 35

—**Maritime.**

See SHIPPING, col. 415.

—**Principal and agent—Indemnity for damage.**

See PRINCIPAL AND AGENT, col. 314.

—**Shares—Company.**

See COMPANY, col. 85.

—**Solicitor.**

See SOLICITOR, col. 423.

LIFE—**Loss of—Damages—Collision.**

See SHIPPING, col. 412.

LIFE ANNUITY.

See ANNUITY, col. 21.

LIFE INSURANCE.

See INSURANCE (LIFE).

LIGHTING—**Streets—Defence of Realm Regulations—Personal injury.**

See NEGLIGENCE, col. 289.

LIMITATION—Words of.

See SETTLEMENT, col. 388.

LIMITATION OF LIABILITY.

See SHIPPING, col. 391.

LIMITATIONS—Will.

See WILL, col. 468.

LIMITATIONS, STATUTES OF.

Annuity, col. 254.

Justices, Proceedings before, col. 255.

Public Authority, col. 256.

Tithe Rent-Charge, col. 257.

Title Acquired by, col. 258.

Annuity.

Will—Administration—Annuity charged on real and personal estate—Express trust—Arrears of annuity—Acknowledgment in writing—Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), ss. 1, 25, 40, 42—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), ss. 8, 10.

LIMITATIONS, STATUTES OF (Annuity) — continued.

Where an annuity is charged upon real and personal estate, whether secured by an express trust or not, only six years' arrears of the annuity are by virtue of s. 42 of the Real Property Limitation Act, 1833, and s. 10 of the Real Property Limitation Act, 1874, recoverable against the real estate, and the same limitation applies to the personal estate although there is no direct statutory bar.

A testator, who died in 1863, by his will gave his real and personal estate to trustees upon trust for sale and conversion, with discretionary power to postpone the sale and conversion, and directed his trustees to invest the net proceeds of such sale and conversion and out of the income thereof to pay A. the annual sum of 700*l.* for her life, and, subject thereto, the testator directed his trustees to stand possessed of the trust estate for his children. The testator had some real estate, but the bulk of his property was personalty. His real estate was not sold until 1915. On the death of A. in 1916 considerable arrears of the annuity were due to her, and her executor claimed payment of all the arrears on the ground that, the annuity being charged on the trust estate and secured by an express trust, no Statute of Limitations applied. On summons by the trustees to determine the matter:—

Held, that, by virtue of s. 42 of the Act of 1833 and s. 10 of the Act of 1874, only six years' arrears of the annuity from the death of the annuitant were recoverable against the trust estate.

The principle of *Sutton v. Sutton* (1882) 22 Ch. D. 511 (the case of a mortgage under s. 8 of the Act of 1874 reproducing s. 40 of the Act of 1833) and of *Henry v. Smith* (1842) 2 D. & War. 381 (a decision under s. 42 of the Act of 1833 with regard to arrears of interest on a judgment debt under the old law) applied.

The Irish cases of *Dower v. Dower* (1885) 15 L. R. Ir. 264 and *In re Nugent's Trusts* (1885) 19 L. R. Ir. 140 approved.

Hughes v. Coles (1884) 27 Ch. D. 231 questioned.

Quære: whether *Hunter v. Nockolds* (1849) 1 Mac. & G. 640 is now law.

Held, also, that there had been no acknowledgment in writing by the trustees, within s. 42 of the Act of 1833, for six years before the issue of their summons, and that after its issue it was not competent for them by any admission in their affidavits to alter the rights of the parties. *In re Turner. Klaffenberger v. Groombridge - Neville J.* [1917] 1 Ch. 422: 86 L. J. (Ch.) 290; 116 L. T. 278; [1917] W. N. 65; 61 S. J. 300

Justices, Proceedings before.

Jurisdiction — Petty sessions — Commencement of prosecution—Conviction on first summons quashed—Second summons based on original complaint—Fisheries (Ireland) Act, 1850 (13 & 14 Vict. c. 88), s. 50.

The complaint, made to the justice, of an offence against s. 16 of the Fisheries (Ireland) Act, 1869 (32 & 33 Vict. c. 92), and not the

LIMITATIONS. STATUTE OF (Justices, Proceedings before)—continued.

issuing of the summons, is the commencement of a prosecution under the Fisheries (Ireland) Acts:—

Held accordingly, that where the complaint was made within six months from the commission of the offence, the prosecution had been commenced within the time limited by s. 50 of the Fisheries (Ireland) Act, 1850 (13 & 14 Vict. c. 88).

Beardsley v. Giddings [1904] 1 K. B. 847 and *Brooks v. Bagshaw* [1904] 2 K. B. 798 applied.

Held, also, that since a complaint had in fact been made to the justice before he issued one summons (which had been quashed), it was immaterial whether he had or had not present to his mind the existence of such complaint at the date when he issued a second summons. *REX v. CORK COUNTY JJ.* — Div. Ct. (Ir.) [1917] 2 I. R. 420

Public Authority.

Contract with private individual—Cause of action—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1 (a).

The defendants, who were a road authority, erected a stone-crusher near a quarry for the purpose of obtaining road materials. They hired H. and his mare to draw wagon-loads of stones from the quarry to the crusher, and while engaged in this work the mare was fatally injured.

More than six months after the date of the accident H.'s administratrix commenced proceedings against the defendants to recover damages for the loss of the mare:—

Held, that the Public Authorities Protection Act, 1893, did not afford a defence to the proceedings: *per* Campbell C.J., because that Act does not extend to private duties or obligations arising out of contracts with particular individuals: *per* Madden J., because the Act does not apply to a case where it was at the option of the public authority either to make or to refuse to make the particular contract out of which the cause of action arose: *per* Gordon J., because the cause of action did not arise in the direct execution by the defendants of any statute, or in the discharge of a public duty owed by them to all the public alike, or in the discharge of a public authority exercised by them impartially with regard to all the public.

Sharpington v. Fulham Guardians [1904] 2 Ch. 449 and *Bradford Corporation v. Myers* [1916] 1 A. C. 242 applied. *HAYES v. KING'S COUNTY C.C. - Div. Ct. (Ir.)* [1917] 2 I. R. 496

Gasworks—Supply of gas to consumer—Obligation of undertakers to fix gas meter—Gas Works Clauses Act, 1871 (34 & 35 Vict. c. 41), s. 11—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61).

The defendants were the gasworks undertakers in the urban district of Pontypridd. The plaintiff was a woman who was employed by a Mrs. Reinecke to put in order a house in Taff Street, Pontypridd, of which she had recently become tenant. The house had been empty for some months and the gas had been cut off. Mrs.

LIMITATIONS, STATUTES OF (Public Authority)—continued.

Reinecke entered into a contract with the defts. for the supply of gas to the premises, and they sent one of their servants to re-connect the pipes. While he was engaged in fixing the meter an explosion occurred, whereby the plt., who was at work on the premises, suffered injuries. The explosion was, as the jury found, due to the negligence of the defts.' servant. The action was not commenced until more than six months after the accident. The defts. relied upon the provisions of the Public Authorities Protection Act, 1893. For the plt. it was contended that, though under the Gas Works Clauses Act, 1871, s. 11, the defts. were compellable to supply the gas and to lay the necessary pipes, they were under no statutory obligation to fix the meter; that the accident consequently did not occur in the course of the execution by them of their statutory duty, and that they were therefore not protected by the Act relied on:—

Held, that the defts. in fixing the gas meter were acting in the execution of their statutory duty, and that the Public Authorities Protection Act, 1893, afforded a defence. *CLAYTON v. PONTYFRIDG* U. D. C.

Lush J. [1917] W. N. 375

Tort—Malicious abuse of authority—Conspiracy—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61).

In 1889 N. was appointed Inspector of National Schools at a progressive salary, "on the usual conditions," and to hold the position "during the pleasure of the Commissioners." Having been reprimanded on several occasions, he was deprived of increments of salary, suspended, and finally compelled to resign on a diminished retiring allowance.

In an action brought by N. against S., the Resident Commissioner of National Education, claiming damages for maliciously procuring and conspiring with others to procure the infliction on the plt. of alleged wrongs whereby his position and salary were prejudicially affected, and which finally resulted in his enforced retirement:—

Held by the Div. Ct. (Ir.), affirming *Kenny J.*, that the Commissioners of National Education were a public authority, that their officers had duties to perform of a public nature, and that the Commissioners and their subordinates in an action for torts alleged to have been committed by them in carrying out their duties were entitled to rely upon the protection afforded by the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61).

Held also, by the K. B. D., that the Act applied to proceedings brought against a public authority by its subordinates. *NEWELL v. STARKIE* - *Kenny J.* [1917] 2 I. R. 73

Tithe Rent-Charge.

"Rent"—*Modus or composition—Real Property Limitation Act, 1833* (3 & 4 Will. 4, c. 26), ss. 1, 29—*Tithe Act, 1836* (6 & 7 Will. 4, c. 71), s. 67.

The tithe rent-charge substituted for tithe by s. 67 of the Tithe Act, 1836, is rent within the definition of "rent" in s. 1 of the Real

LIMITATIONS, STATUTES OF (Tithe Rent-Charge)—continued.

Property Limitation Act, 1833, and is not a modus or composition within the exception to that definition.

Irish Land Commission v. Grant (1881) 10 App. Cas. 14 followed. *ASPLEN v. PULLIN*

Div. Ct. [1917] 1 K. B. 187; 86 L. J. (K. B.) 237; 115 L. T. 786; [1916] W. N. 400

Title Acquired by.

Intestacy—Next of kin in possession—Other next of kin out of possession for more than twelve years—Joint tenancy in acquired shares—Partnership—Partner as to profits—Purchase of other land out of profits made by use of land held in co-ownership—Tenancy in common of purchased lands—Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 20, sub-s. 3. -

Two of the next of kin of the yearly tenant of a farm who died intestate acquired a title under the Statute of Limitations to the shares of the other next of kin. They worked the farm together and treated the profits as divisible equally between them. They subsequently purchased four other farms with the profits made out of the original farm, and worked them in the same way. Two of the farms were purchased before the Partnership Act, 1890, came into operation, and two after that date. All the farms were bought out under the Land Purchase Acts, and were registered subject to equities, four in the name of one, and one in the joint names of the two. On the death of one intestate the survivor took out administration to him. An action was afterwards brought to administer his estate by one of his next of kin. A question arose in the administration, namely, whether the farms were held by the two as tenants in common or as joint tenants:—

Held: (1.) That the original farm was held as to the original shares of the two next of kin by the plt. and the deft. as tenants in common, and as to the acquired shares by them as joint tenants.

Smith v. Savage [1906] 1 I. R. 469 followed.

(2.) That the farms purchased with the profits of the original farm were held by the plt. and the deft. as tenants in common, and that s. 20 of the Partnership Act, 1890, did not apply.

In re CHRISTIE. CHRISTIE v. CHRISTIE

O'Connor M.R. (Ir.) [1917] 1 I. R. 17

LIMITED COMPANY.

See COMPANY and MAINTENANCE (SUIT).

LINE OF BUILDINGS—London.

See LONDON, col. 265.

LIQUIDATION—Company.

See COMPANY—WINDING UP, col. 99, and *WORKMEN'S COMPENSATION*, col. 516.

—Company—Removing.

See COMPANY—WINDING UP, col. 100.

LIQUIDATOR.

See COMPANY—WINDING UP, col. 99, and *LANDLORD AND TENANT*, col. 244.

LITERARY WORK.

See COPYRIGHT, col. 116.

LIVERPOOL—Port—Limits of.

See PRIZE COURT, col. 322.

LOADING—Ship.

See SHIPPING, col. 393.

LOAN—Interest.

See INTEREST, col. 214.

— Money-lenders.

See MONEY-LENDER, col. 279.

— Securities—Treasury.

See CAPITAL OR INCOME, col. 76.

LOCAL GOVERNMENT.

Borough Council, col. 259.

Buildings, col. 259.

Drainage, col. 269.

Highway, col. 261.

Housing, col. 261.

Inspection of Documents. *See* above.
Borough Council.

Negligence. *See* NEGLIGENCE.

Nuisance, col. 262.

Road, col. 262.

Sewer. *See* above, *Drainage.*

Street. *See* above, *Road.*

Borough Council.

Documents — Inspection — Member's right to inspect—Mandamus.

The report of a medical officer of health as to the sanitary condition of a house in a metropolitan borough, together with the observations upon it of the public health committee of a borough council, are documents which a member of the borough council has a prima facie common law right to inspect and take copies of. But where such report and observations relate to or bear upon impending litigation between the owner of the house inspected and the borough council, and it appears that the member of the council who desires inspection of the documents is actuated not solely in the public interest, but rather in the interest of the owner of the house, who resents the action of the public health committee, the Court will in its discretion refuse to compel the borough council by mandamus to allow the member to inspect them. *REX v. HAMPESTEAD B. C.* *Ex parte* WOODWARD - - - Div. Ct. 15 L. G. R. 309; 116 L. T. 213; 33 T. L. R. 157; 81 J. P. 65

Buildings.

By-laws—New buildings—Addition to existing building—Air-space at rear—Unreasonableness of by-law—Public Health Acts Amendment Act, 1907 (7 Edw. 7, c. 53), s. 23.

In 1902 the defts., a rural authority, had adopted by-laws approved by the Local Government Board, No. 12 of which provided that "(1.) Every person who shall erect a new domestic building shall provide at the rear of

LOCAL GOVERNMENT (Buildings)—continued.
such building an open space . . . of not less than 150 square feet. . . . (2.) . . . Each open space extend laterally throughout the entire width of the building. . . ." By s. 23 (d) of the Public Health Acts Amendment Act, 1907, "the making of any addition to an existing building by raising any part of the roof, by altering a wall or making any projection from the building, shall be deemed to be erection of a new building."

In 1916 the plts. had, without depositing plans, made an addition to the front of the house of one of their house masters by adding three rooms, one on the top of the other. They conceded that since the passing of the Act of 1907 the addition was a new building, but objected that as the addition and projection, which did not otherwise infringe the Public Health Acts, would before 1907 have been treated merely as an addition to an old building, the by-law of 1902 was unreasonable and bad. The defts. claimed that by-law 12 had been infringed as regards air space, and threatened to pull down the addition:—

Held, in an action for an injunction to restrain them from doing so, that since the passing of the Public Health Acts Amendment Act, 1907, the by-law had become unworkable, and was consequently unreasonable and bad, and that an injunction should be granted accordingly. *REPTON SCHOOL (GOVERNORS OF) v. REPTON R. D. C.* - - - Bailhache J. 15 L. G. R. 938; [1917] W. N. 334; 34 T. L. R. 62

Drainage.

Easement — Prescription — Secret enjoyment — Sewers—Noxious trade effluent—Sewage farm—Injury—Injunction—Statute of Limitations, 1623 (21 Jac. 1, c. 16), s. 2—Rivers Pollution Prevention Act, 1876 (39 & 40 Vict. c. 75), s. 7. LIVERPOOL CORPORATION v. COCHILL & SON, LD.

Eve J. [1917] W. N. 334

Highway authority—Natural stream canalized—Irrigation gutter—Overflow pipe—Right to keep open—"Ditches, gutters, drains"—"Works . . . for the purpose of irrigating land"—Interference of owner—Highway Act, 1835 (5 & 6 Will. 4, c. 50), ss. 67, 68—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 144, 308; s. 327, sub-s. 1.

The water from springs and surface water had for many years been carried by a brook partly canalized under public roads and by an underground culvert into a catch-pit or chamber in the plt.'s field and thence by pipes to the boundary of another adjoining field of the plt. This brook was crossed at a higher level at or near the chamber by the culvert of a disused gutter for the irrigation of the plt.'s fields, under statutory privilege, with sewage from the defts.' sewer.

The defts., as the highway authority, claimed the right to have an "overflow pipe" from the chamber to the irrigation gutter, by means of which water which the brook pipe was of insufficient capacity to carry away was carried from the chamber to the irrigation gutter and thence flooded the plt.'s land, left open and not interfered with by the plt.:—

LOCAL GOVERNMENT (Drainage)—continued.

Held, that the defts. had no right to keep open the overflow pipe from the chamber B to the irrigation gutter, and the plt. might alter, obstruct, interfere with, or remove it in order to prevent damage to her land, it not being such a gutter or drain as was included in s. 67.

The plt. was entitled to rely on s. 327 of the Public Health Act, 1875, as restricting the powers of the defts., they having only the powers as highway authority conferred on them by s. 144 of that Act. *BALLARD v. LEEK* U. D. C. Eve J. 117 L. T. 12; 81 J. P. 232

Sewer—Pipe to drain several houses into public sewer—Pipe constructed by owners of houses—Dangerous to occupants of houses—Pipe vested in local authority as sewer—Liability for maintaining sewer—“Nuisance”—Public Health Act, 1875 (38 & 39 Vict. c. 5), ss. 13, 18, 19.

The defts., who were the urban sanitary authority, served notices, under ss. 23 and 36 of the Public Health Act, 1875, upon the owners of a row of houses within the district requiring them within a certain time to provide water-closets in the houses and to connect the same with the main sewer. By arrangement among the owners the work was carried out by the owner of two of the houses, one of which was occupied by the plt. A six-inch earthenware pipe was laid through the gardens at the backs of the houses to receive the drainage of each house and to discharge into the main sewer. This pipe was laid underground until it came to the garden of the house in which the plt. lived, where, owing to a fall in the land, half the pipe appeared above the ground. About three years after the pipe was laid the plt. in going down her garden slipped on the pipe and was injured. In an action against the urban district council to recover damages for the personal injuries so sustained, the pipe being a “sewer” which was vested in them, the jury found that the sewer was constructed so as to be dangerous to the occupants of the house, that the defts. had notice of its dangerous condition, and were negligent in not obviating the danger:—

Held, that as the deft. council would have been entitled, if they had themselves constructed the sewer, to lay it above ground, they were not guilty of any breach of duty in maintaining the sewer in the same condition as it was when laid, and were therefore not liable to the plt. *MORRIS v. MYNYDDISLWYN* U. D. C. C. A. [1917] 2 K. B. 309; 86 L. J. (K. B.) 1094; 15 L. G. R. 453; 117 L. T. 108; 81 J. P. 261

Highway.

See above, Drainage, col. 260, Highway, col. 189, and below, Road, col. 263.

Housing.

Demolition order—Subsequent application for postponement—Undertaking to repair—Discretion of local authority—Owner’s specifications—Duty to consider—Housing, Town Planning, &c., Act, 1909 (9 Edw. 7, c. 44), s. 18, sub-s. 3.

Sect. 18, sub-s. 3, of the Housing, Town Planning, &c., Act, 1909, enables an owner

LOCAL GOVERNMENT (Housing)—continued.

against whom a demolition order has been made to apply subsequently for postponement of the operation of that order.

In considering whether they will grant that application the local authority must exercise their discretion judicially.

They must give the owner an opportunity of adequately presenting his case, e.g. by furnishing specifications of his proposed works, and must consider whether those proposed works can or will render the premises fit for human habitation.

To decide on *ex parte* evidence, without considering the owner’s specifications, that no works whatever can render the premises fit for human habitation, and consequently to refuse the application in limine, is not a proper exercise of their discretion. *BROADBENT v. ROTHERHAM CORPORATION* - Astbury J. [1917] 2 Ch.

31: 86 L. J. (Ch.) 501; 15 L. G. R. 467; 117 L. T. 120; [1917] W. N. 145; 61 S. J. 460; 81 J. P. 193

Inspection of Documents.

See above, Borough Council, col. 259.

Negligence.

— Urban authority.

See NEGLIGENCE, col. 287.

Nuisance.

— Insanitary estate.

See below, Road, col. 263.

— Notice to owner of premises.

See PUBLIC HEALTH, col. 336.

— Sewer.

See above, Drainage, col. 260.

Road.

Building estate—Roads used by and dedicated to the use of the public—“Owner”—Persons owners of soil of roads not owners of roads—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 4.

Persons who are owners of the soil of roads used by and dedicated to the public are not owners of the roads within the meaning of s. 4 of the Public Health Act, 1875, which provides (*inter alia*) that the word “owner” means the person who would receive the rack rent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, if such lands or premises were let at a rack rent. Where, therefore, trustees under the powers contained in a will had formed a building estate by granting ground leases for ninety-nine years containing covenants on the part of the lessees to build houses and make roads, and the roads so made had been used for some years by the public without let or hindrance, and were in fact dedicated to the public, and the local authority had placed lamps in them, and had sent their carts over them to collect refuse from the houses, it was *held* that the trustees were not the “owners” of the roads within the meaning of the section, and, consequently, were not liable to abate nuisances alleged to exist thereon.

Plumstead Board of Works v. British Land Co.

LOCAL GOVERNMENT (Road)—continued.

(1875) L. R. 10 Q. B. 203 and *Great Eastern Ry. v. Hackney District Board of Works* (1883) 8 App. Cas. 687 followed. *MACEY v. JAMES*
Div. Ct. 86 L. J. (K. B.) 1257; 15 L. G. R. 479; 81 J. P. 213

Expenses of making up—Apportionment among property owners—Failure of owner to make objections—Reliance on exemption previously bargained for—Private Street Works Act, 1892 (55 & 56 Vict. c. 57), ss. 6, 7 (e), (f), 8, sub-s. 2.

Where an urban authority has adopted the Private Street Works Act, 1892, and has duly published the resolution required by s. 6 of that Act with reference to the making up of a new street, an objection by an owner of property fronting on the street (who is shown in a provisional apportionment as liable to be charged with an apportioned amount of the expenses of the making up), on the ground that by agreement with the urban authority he has been exempted from liability in respect of his property, is, if not an objection that the property "ought to be excluded from . . . the provisional apportionment," within the meaning of head (e) of s. 7 of the Act, at any rate an objection "that the provisional apportionment is incorrect in respect of some matter of fact," within the meaning of head (f) of s. 7, which must be taken by written notice to the urban authority within one month after the publication of the resolution; and, having regard to s. 8, sub-s. 2, of the Act, the objection cannot be taken in proceedings to enforce the charge upon the property to secure the apportioned amount.

Wallasey Urban Council v. W. H. Walker & Co. (1906) 70 J. P. 199 approved and followed. *PORTHCAWL U. D. C. v. BROGDEN - Sargant J.* [1917] 1 Ch. 534; 86 L. J. (Ch.) 393; 15 L. G. R. 601; 116 L. T. 405; [1917] W. N. 39; 61 S. J. 300; 81 J. P. 137

Street—Notices to frontagers to sewer, pave, &c., within a time to be specified—Reasonableness of time specified—Validity of notice—Work executed by local authority—Demand for payment—Appeal to Local Government Board—Decision announced, but appeal withdrawn by consent before order made—Jurisdiction—Waiver—Estoppel—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 150, 257, 268.

Notices were given by a local authority under s. 150 of the Public Health Act, 1875, requiring the frontagers on a piece of road 1450 feet long to sewer, level, pave, &c., the same within one calendar month. It was admitted that the work could not reasonably be completed in this period. The frontagers made no attempt to do the work, and some months later the local authority did the work themselves and gave notice to the frontagers demanding payment of the expenses so incurred. The defts., who were the principal frontagers, appealed to the Local Government Board under s. 268 of the Act, raising as one of the grounds of appeal the contention that the notices were

LOCAL GOVERNMENT (Road)—continued.

invalid by reason of their not giving a reasonable time for the completion of the work.

Later the Local Government Board intimated that their decision was that the defts. must pay, subject to a part of the sum claimed being paid by instalments. Prior to this the local authority had offered the defts. rather better terms, and on learning this the Local Government Board allowed the defts. to withdraw their appeal with a view to completing their negotiations with the local authority. No formal order was therefore made by the Board. The negotiations between the defts. and the local authority subsequently broke down, and the local authority then took out a summons for a declaration that they were entitled to a charge in respect of the apportioned expenses under s. 257 of the Act:—

Held, that as no order had been made by the Board there was nothing to deprive the Court of jurisdiction to deal with the question of the validity of the notices, and that the defts. were not estopped from raising such question by way of defence.

And *held*, that as the notices had not allowed a reasonable time for the performance of the work, they were illusory and invalid, and the pls. were not entitled to the charge asked for. *BRISTOL CORPORATION v. SINNOTT*

C. A. 15 L. G. R. 871; [1917] W. N. 311; 82 J. P. 9; 62 S. J. 53

Sewer.

See above, **Drainage**, col. 260.

Street.

See above, **Road**, col. 262.

LOCAL TRIBUNAL—Military service.

See **ARMY**, col. 49.

LONDON.

Buildings, col. 264.

Employment Agency, col. 267.

Fire. See **CONTRACT**.

Massage Establishment, col. 267.

Parks and Open Spaces, col. 268.

Quinquennial Valuation. See **RATES**.

Rating. See **RATES**.

Buildings.

Building notice—Alteration and building—Necessary repair—London Building Act, 1894 (57 & 58 Vict. c. cxxiii.), ss. 145, 209.

By s. 209 of the London Building Act, 1894, "Every addition to or alteration of a building and any other work made or done for any purpose in to or upon a building (except that of necessary repair not affecting the construction of any external or party wall)" is to be subject to the provisions of the Act relating to building notices.

A certain house in London had a flat wooden roof covered with zinc. The zinc having become defective, the owner employed a builder to repair it. The builder stripped off the zinc, and substituted for it felt covered with a layer

LONDON (Buildings)—continued.

of asphalt. On appeal by the builder against a conviction for failing to serve a building notice in accordance with the provisions of the Act:—

Held, by Viscount Reading C.J. and Ridley J. (on the assumption that the words "except that of necessary repair" in s. 209 formed an exception to the words "alteration of a building" as well as to "any other work"), that there was evidence on which the magistrate might find that the stripping of the roof and the substitution of another material for the external covering was an alteration which was something more than a repair, and consequently did not come within the exception; and, by Avory J., that the words "except that of necessary repair" formed an exception only to "any other work" and not to "alteration of a building," and that the substitution of the new material being an alteration, it was immaterial to consider whether it was a work of necessary repair or not. *GODDARD v. GREIG* - - - Div. Ct.

[1917] 2 K. B. 397; 86 L. J. (K. B.) 1485;
15 L. G. R. 552; 117 L. T. 277;
[1917] W. N. 189; 81 J. P. 215

General line—Certificate of superintending architect—Order of tribunal of appeal—Definition of building line—Conclusiveness—London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), ss. 22, 24, 25, 183.

In 1897 the superintending architect of metropolitan buildings, appointed under the London Building Act, 1894, defined the general line of buildings in a street with reference to a certain plot of land which formed part of a row of premises in the street lying between two side streets. The owner of the land appealed to the tribunal of appeal, which by an order of Mar. 12, 1897, varied the certificate and determined that the building line was in a different position and that it extended beyond one of the side streets. In May, 1912, the superintending architect was called upon to define the building line in the same street with reference to a building in the same row of premises as the plot of land above referred to. No buildings altering the building line had been erected in this part of the street since 1897. The architect issued his certificate, defining the building line to be as defined by the architect's certificate issued in 1897. On appeal to the tribunal of appeal by a person claiming to be aggrieved by the certificate it was contended that the building line in the part of the street in question had been finally determined by the tribunal's order of Mar. 12, 1897. It was contended for the L. C. C. that that order was made without jurisdiction in that it purported to define the building line in a part of the street which had not been dealt with by the architect's certificate, and evidence was tendered by the Council to prove that the building line was as defined by the architect's certificates issued in 1897 and 1912. The tribunal rejected the evidence and made an order reversing the certificate of May, 1912:—

Held, by the C. A., affirming the decision of the Div. Ct. [1917] 1 K. B. 85, that the order of the tribunal of appeal of Mar. 12, 1897, was

LONDON (Buildings)—continued.

made within the jurisdiction of the tribunal, that the building line was finally and conclusively defined by that order, and that the evidence tendered had been rightly rejected.

In re London C. C. (1904) 91 L. T. 501 approved. LONDON C. C. v. GALSWORTHY

C. A. [1917] 1 K. B. 902; 86 L. J. (K. B.)
601; 116 L. T. 528; 15 L. G. R. 341;
[1917] W. N. 84; 81 J. P. 153

Party wall notice—Transfer of site by building owner—Effect of, on his statutory obligations—Easement of support to building by building—How affected by building notice—London Building Act, 1894 (57 & 58 Vict. c. ccxiii.).

The plts. and the defts. were the owners of two adjoining houses in London. The houses were very old and had been built together so as to be mutually dependent upon one another for support. They were separated by a party wall. The defts., having resolved to rebuild their house, served upon the plts. a party wall notice under the London Building Act, 1894, and the parties, in accordance with the provisions of s. 91 of that Act, appointed their respective surveyors. The house was pulled down and rebuilt 13 feet further back from the street, and the defts. conveyed the vacant 13 feet strip to the County Council, who dedicated it to the public. The effect of setting the house back was that the party wall was left exposed to a depth of 13 feet and rendered unsafe by the withdrawal of the support of the defts.' house. Subsequently to the dedication the surveyors made an award ordering the defts. to erect on the edge of the strip so dedicated a pier for the support of the exposed portion of the party wall. In an action brought to enforce the award, and also to recover damages at common law for the withdrawal of the support afforded by the building pulled down:—

Held: (1.) That the defts., having once served a party wall notice under the Act, could not by transferring the site to the County Council get rid of their obligations as building owners, but were bound, notwithstanding the transfer, to carry out the award which was subsequently made.

(2.) That the award, in ordering the building of a pier on the vacant strip of land, was not bad, either by reason of the fact that the site had been dedicated to the public as a highway, or that, subject to the rights of the public, it was the property of third persons; for the public by the dedication, and the County Council by the conveyance, took subject to the statutory rights of the plts. under the London Building Act.

(3.) That an easement of support to buildings by buildings may be acquired by prescription, and that such an easement had in fact been acquired by the plts.; but that the statutory rights of protection which the plts. as adjoining owners acquired under the Act upon the service of the party wall notice by the defts. were inconsistent with and superseded their common law right of support from the defts.' building, and that the claim for

LONDON (Buildings)—continued.

damages at common law could consequently not be maintained. *SELBY v. WHITBREAD & Co.*

McCardie J. [1917] 1 K. B. 736; 86 L. J. (K. B.) 974; 15 L. G. R. 279; 116 L. T. 699; [1917] W. N. 103; 81 J. P. 165; 33 T. L. R. 214

Employment Agency.

Licences—Refusal of licence—Appeal—Procedure—London County Council (General Powers) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. cxxix.), s. 22, sub-s. 5—Summary Jurisdiction Rules, 1915, r. 58.

On Mar. 16, 1917, the appellant applied to the respondents under Part V. of the London County Council (General Powers) Act, 1910, for an employment agency licence, and on the same day the application was refused. On Mar. 21 the appellant appealed to a metropolitan magistrate and applied for a summons to the respondents in accordance with the usual practice in such cases. The appeal by complaint came on for hearing on Mar. 30. On that day the respondents objected that there was no jurisdiction to hear the appeal, as the appellant had not complied with s. 22, sub-s. 5, of the Act, he having failed to give the respondents four days' notice in writing of such appeal:—

Held by the Div. Ct., that r. 58 of the Summary Jurisdiction Rules, 1915, had substituted the procedure by complaint and summons for the four days' notice of appeal required by s. 22, sub-s. 5, and that sub-s. 5 must be taken to have been impliedly repealed by r. 58. It was therefore unnecessary for the appellant to give the four days' notice, and the magistrate had jurisdiction to hear the appeal. *EDELSTEIN v. LONDON C. C.* - Div. Ct. 15 L. G. R. 899; [1917] W. N. 312; 81 J. P. 294

Fire.

— Fires Prevention (Metropolis) Act, 1774.
See CONTRACT, col. 105.

Massage Establishment.

Refusal of County Council to register—Appeal—Duty of magistrate on hearing appeal—London County Council (General Powers) Act, 1915 (5 & 6 Geo. 5, c. ciii.), s. 23.

By s. 23, sub-s. 1, of the London County Council (General Powers) Act, 1915, no person, unless registered with the Council, may lawfully carry on a massage establishment in London.

By sub-s. 5 the Council may by order refuse to register the name of any person carrying on or proposing to carry on such an establishment if (a) "The Council have reason to believe that the person carrying on or proposing to carry on such establishment is of bad character," or (b) "The Council have reason to believe that the premises are being used for any immoral purpose."

By sub-s. 6, before making the order they are to give the said person an opportunity of being heard against the order.

By sub-s. 8, any person who deems himself aggrieved by any such order may appeal to a metropolitan police magistrate, who, "after considering any representations made on behalf

LONDON (Massage Establishment)—continued.

of the Council, may, if he thinks fit, confirm such order or direct the Council to withdraw such order":—

Held, that on the hearing of an appeal under that section the magistrate is not justified in confirming the order merely because he is of opinion that the Council had reason to believe that the appellant was of bad character or that the house was being used for immoral purposes; he must state that he entertained the same belief himself. *DALE v. LONDON C. C.*

Div. Ct. [1917] 1 K. B. 808; 86 L. J. (K. B.) 844; 15 L. G. R. 271; 116 L. T. 216; [1917] W. N. 41; 81 J. P. 67

Parks and Open Spaces.

By-laws—Sale of literature—Consent of London County Council—Refusal of in accordance with general resolution—Applicant's right to be heard—London County Council (General Powers) Act, 1890 (53 & 54 Vict. c. cxxiii.), s. 14, Sched. B.

By s. 14 of the London County Council (General Powers) Act, 1890, and Sched. B, the Council are empowered to make by-laws in relation to the parks under their control, and made a by-law prohibiting the "selling . . . any article or distributing any bill or like thing . . . without the consent of the council in writing." Prior to 1916 the Council had issued permits to sell literature in the parks, but in that year passed a general resolution that existing permits be determined and no new permits issued. Subsequently, and upon the ground of having passed this general resolution, the Council refused an application for permission to sell a pamphlet at public meetings in the parks in connection with the National League of the Blind:—

Held, that the applicant had a right to have the application considered and was entitled to a mandamus to the Council to hear and determine it.

Per AVORY J.: The only duty cast upon the Council is to consider an application for the sale of an article in the parks. They are not bound to consider whether, in their opinion, the pamphlet is open to objection. *REX v. LONDON C. C. Ex parte CORRIE* - Div. Ct. 15 L. G. R. 889; 4 T. L. R. 21; 62 S. J. 70

Quinquennial Valuation.

— Notice sent by post but not received.
See RATES, col. 345.

Rating.

See RATES.

LONDON BUILDING ACT, 1894.

See LONDON, col. 264.

LONDON (CITY OF) COURT.

See SHIPPING, col. 392.

LOSS—Insurance.

See INSURANCE (LOSS).

— Principal and agent—Untrue statement by agent.

See PRINCIPAL AND AGENT, col. 448.

LOSS—*continued*.— **Shipping**.See **SHIPPING**, col. 412.— **Unseaworthiness**.See **INSURANCE (MARINE)**, col. 209.**"LOSS OF DAMAGE OR MISFORTUNE TO" GOODS.**See **INSURANCE (LOSS)**, col. 205.**LOSS OR DAMAGE**—**Insurance**.See **INSURANCE (LOSS)**, col. 204.**"LOSS OR DAMAGE BY FIRE"**—**Insurance**.See **LANDLORD AND TENANT**, col. 245.**"LOSS RESULTING FROM MILITARY POWER."**See **INSURANCE (FIRE)**, col. 202.**LOST WILL**—**Evidence**—**Content**.See **PROBATE**, col. 334.**LOTS**—**Sale in**.See **VENDOR AND PURCHASER**, col. 418.**LUNATIC**—**Ireland**.See **IRELAND**, col. 229.

Realty, Sale of—Second lunacy—Persons entitled to proceeds of sale—Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 123.

A sum of stock standing in Court in lunacy to the credit of "Re W. A., a Person of Unsound Mind," represented the proceeds of sale of realty which had been devised in fee to J. A., the elder brother of W. A., who was also of unsound mind. Both of the brothers were bachelors and died intestate. The land was sold in 1898 in the lunacy of J. A., under the provisions of the Lunacy Act, 1890, and the purchase-money was paid into Court to the credit of "Re J. A., a Person of Unsound Mind. Proceeds of Real Estate," and was invested. After the death of J. A. in 1904, leaving W. A. his heir-at-law, the fund was transferred to the credit of W. A. in his lunacy:—

Held, following *In re Wharton* (1854) 5 D. M. & G. 33, that, but for the transfer of the fund to the credit of the second lunacy, the fund would have still retained the character of realty; that the transfer did not alter this character; and that on the death of W. A. the fund belonged to the heir-at-law of J. A. *In re ALSTON, SINCLAIR v WILLES* - - - Sargant J. [1917] 2 Ch. 226; 83 L. J. (Ch.) 564; 117 L. T. 222; [1917] W. N. 189; 33 T. L. R. 410; 61 S. J. 525

— **Testator** — **Committee of** — **Servants engaged**—**Legacies to persons in testator's service at death**.
See **WILL**, col. 463.

MAGISTRATES.See **JUSTICES**.

MAHOMEDAN — **Christian woman** — **Mixed marriage**—"Writing of divorcement."
See **DIVORCE**, col. 146.

MAINTENANCE — **Suit** — **Maintained action successful**—**Liability of maintainer**.

An action for maintenance of a suit will lie although the maintained action has been decided in favour of the plt. in that action.

Oram v. Hutt [1914] 1 Ch. 98 followed.

Decision of Viscount Reading C.J. [1917] 1 K. B. 402 affirmed on this point. *NEVILLE v. LONDON EXPRESS NEWSPAPERS, LD.* - C. A. [1917] 2 K. B. 564; 86 L. J. (K. B.) 1055; 117 L. T. 598; [1917] W. N. 203; 33 T. L. R. 409

MANAGER—**Bank**—**Authority**.See **BANK**, col. 56.— **Company**—**Receiver and manager**.See **COMPANY**, col. 88.— **Remuneration**—**Excess profits duty**.See **COMMISSION**, col. 83, and **REVENUE**, col. 355.**MANAGERS**—**School**.See **EDUCATION**, col. 153.**MANDAMUS**—**Appeal**.See **RATES**, col. 346.— **Audit**—**Ireland**.See **IRELAND**, col. 219.— **Military law**—**Court of inquiry**—**Irregular proceedings**.See **ARMY**, col. 48.— **Scheme**—**Christ's Hospital**.See **CHARITY**, col. 81.**MANDATE**—**Customer**—**Bank**.See **BANK**, col. 55.**MARINE INSURANCE.**See **INSURANCE (MARINE)**.**MARITIME LIEN**—**Seamen's wages and master's disbursements**.See **SHIPPING**, col. 415.**MARRIAGE** — **Contract** — **Engagement ring**—**Right to return of ring**.

When an engagement ring is given by a man to a woman, there is an implied condition that the ring shall be returned if the engagement is broken off. *JACOBS v. DAVIS* - Shearman J.

[1917] 2 K. B. 532; 86 L. J. (K. B.) 1497; 117 L. T. 569; [1917] W. N. 236; 33 T. L. R. 488; 61 S. J. 612

Divorce.See **DIVORCE**, col. 145.— **Foreign**—**Expert evidence**—**Bigamy**.See **CRIMINAL LAW**, col. 129.— **Soldier's will**—**Revocation**.See **PROBATE**, col. 335.— **Validity**.See **DIVORCE**, col. 146.**MARRIAGE SETTLEMENT** — **Bankruptcy** —

After-acquired property—**Covenant to settle**.

See **BANKRUPTCY**, col. 60.— **Covenant to settle wife's after-acquired property**.See **SETTLEMENT**, col. 385.

MARRIED WOMAN—*Restraint on anticipation—Partial release by deed poll while discover—Declaration—Direction to trustees—Validity.*

The plt., being then a spinster entitled to a reversionary share under a will subject to a restraint upon anticipation in the event of her marriage, by a deed poll executed before her marriage declared that her said reversionary share should in the event of her marriage belong to her for her separate use, and that for the purposes and subject to the conditions therein mentioned, she should have full power to dispose of or charge the said share by way of anticipation or otherwise as she might think fit, but that except as therein provided nothing therein contained should prejudice the continuance of the said restraint. The deed poll was immediately communicated to the trustees of the will. Three mortgages pursuant to the conditions contained in the deed poll were made by the plt. while a married woman. On a summons taken out for the purpose of determining the validity of these mortgages and whether the plt. had power to make any future mortgages for the purposes declared by the deed poll :—

Held, that the deed poll operated by way of direction to the trustees, and thus amounted to a complete and effectual transfer of the plt.'s share upon a new and modified trust, and that for the purposes and subject to the conditions imposed by the deed poll she had power to deal with her share by way of anticipation during coverture.

Semble, apart from its operation by way of direction, the declaration under seal would have been sufficient, as a release, to remove the protection attached to the original trust. *In re* CHRIMES. *LOCOVICH v. CHRIMES*

Sargant J. [1917] 1 Ch. 30 ; 86 L. J. (Ch.) 217 ; 115 L. T. 706 ; 61 S. J. 56

See HUSBAND AND WIFE.

MARRIED WOMEN'S PROPERTY ACT, 1882.

See HUSBAND AND WIFE, col. 195.

MASSAGE ESTABLISHMENT—London.

See LONDON, col. 267.

MASTER—Disbursements—Maritime lien.

See SHIPPING, col. 415.

MASTER AND SERVANT.

Common Employment, col. 272.

Dismissal, col. 272.

Employment, col. 273.

False Imprisonment. See below, **RAILWAY COMPANY.**

Husband and Wife. See **COUNTY COURT.**

Military Service, col. 273.

Negligence. See **NEGLIGENCE.**

Patent. See **PATENT.**

Railway Company, col. 274.

Seduction. See **SEDUCTION.**

Trade Secret, col. 275.

Workmen's Compensation. See **WORKMEN'S COMPENSATION.**

MASTER AND SERVANT—*continued.*

Common Employment.

Mere volunteer—Volunteer with interest—Liability of master for negligence of servant.

The defts. Moss' Empires had under agreement the use of Drury Lane Theatre for the production of a revue. The plaintiff, a principal dancer, attended rehearsals of the revue ; she was under no contract with the defts. to attend them and was not paid for her attendances, but attended in the hope and expectation of obtaining an employment for the run of the revue when it was ready for production. At one of the rehearsals a staircase which formed part of the scenery was fixed upon the stage by the direction of the producer of the revue, who was a servant of the defts. Moss' Empires, in such a way as to be unsafe. The plt., with others, took up a position on the staircase by the direction of the producer, when the staircase collapsed with the result that the plt. sustained serious injuries, to recover damages for which she brought the present action. The jury found that the plt. was not in the employment of the defts. Moss' Empires, and that the accident was caused by the negligence of one of their servants, and judgment was given against Moss' Empires :—

Held, that on the facts the finding of the jury that the plt. was not a servant of the defts. was right ; and, further, that the plt. was not a mere volunteer who could not be in a better position to recover damages from the defts. than their own servants, but was a volunteer in a service in which she had a common interest with the defts., and therefore the doctrine of common employment had no application and the plt. was entitled to recover.

Holmes v. North Eastern Ry. Co. (1869) 4 Ex. 254 ; (1871) 6 Ex. 123 and *Wright v. London and North Western Ry. Co.* (1876) 1 Q. B. D. 252 followed.

Degg v. Midland Ry. Co. (1857) 1 H. & N. 773 and *Potter v. Faulkner* (1861) 1 B. & S. 800 distinguished. *HAYWARD v. DRURY LANE THEATRE, LD. AND MOSS' EMPIRES, LD.*

C. A. [1917] 2 K. B. 899 ; 117 L. T. 523 ; 33 T. L. R. 557 ; 61 S. J. 664

Dismissal.

Editor—Termination of employment—Length of notice.

In an action by an editor against the proprietors of a newspaper for wrongful dismissal there was no evidence of any custom as to the length of notice to which in the absence of express agreement an editor was entitled, and the jury found for the plt. on the basis that he was entitled to twelve months' notice :—

Held, that in the circumstances of the case it could not be said that the view of the jury was unreasonable. *GRUNDY v. SUN PRINTING AND PUBLISHING ASSOCIATION* - C. A. 33 T. L. R. 77

Justification — Commission — Salary for current period.

A servant dismissed for misconduct is entitled

MASTER AND SERVANT (Dismissal)—
continued.

to recover arrears of salary due to him. *HEALEY v. SOCIÉTÉ ANONYME FRANÇAISE RUBASTIC AVOY J.* [1917] 1 K. B. 946; 86 L. J. (K. B.) 1254; 117 L. T. 92; [1917] W. N. 189; 33 T. L. R. 300

Employment.

See below, **Military Service**, col. 273, and **WORKMEN'S COMPENSATION**.

False Imprisonment.

See below, **Railway Company**, col. 274.

Husband and Wife.

— Employment by wife—Excessive damages.
See **COUNTY COURT**, col. 121.

Military Service.

— Local authority—Employee joining Army—Continuance of civil pay.
See **EMERGENCY LEGISLATION**, col. 156.

Servant leaving employment "of his own accord"—Provident fund—Mobilization—Enlistment—Public policy.

Appeal from the Westminster County Court. The defts. were the directors of the Army and Navy Co-operative Society, Ltd., and, as such, the trustees of a provident fund founded by the society. The plt. was the widow and administratrix of William Thomas Joyce, who had been an employee of the society and a contributor to the fund. The fund was regulated by certain rules. By r. 3, in case of the death of a member leaving a widow nine months' pay was payable. By r. 6 "no person dismissed from the society's employment, or leaving it of his or her own accord, or ceasing to be a member of the fund at his or her own request, shall have any claim upon the provident fund; but the trustees shall have absolute discretion to return to him or her the whole or any part of the sum which he or she has subscribed."

Joyce applied for and obtained leave to join the forces. On Sept. 9, 1914, he enlisted in the Coldstream Guards. In Oct., 1915, he was killed in action. In Apr., 1916, the present claim was made. The county court judge gave judgment for the defts. The plt. appealed.

The Div. Ct. *held* that Joyce had left the society's employment of his own accord within the meaning of r. 6, and that there was nothing in that rule which was contrary to public policy. The appeal was therefore dismissed. *JOYCE v. LORD EBURY* - Div. Ct. [1917] W. N. 51; 33 T. L. R. 145

Termination of period of exemption—Effect on contract for civil employment—Determination of contract—Claim for continuance of commission after determination—Military Service Act, 1916 (5 & 6 Geo. 5, c. 104), s. 3, sub-s. 5—Military Service Act, 1916 (Sess. 2) (6 & 7 Geo. 5, c. 15), s. 1, sub-ss. 1, 2.

The effect of the Military Service Acts, 1916, on a contract for civil employment is to determine the contract ipso facto at the appointed date for the second Act coming into operation, that is, Jun. 24, 1916, or, where exemption is

MASTER AND SERVANT (Military Service)
—continued.

allowed under the first Act, at the termination of the period of exemption.

Principle in *Tamplin Steamship Co. v. Anglo-Mexican Petroleum Products Co.* [1916] 2 A. C. 397 applied. *MARSHALL v. GLANVILLE*

Div. Ct. [1917] 2 K. B. 87; 86 L. J. (K. B.) 767; 116 L. T. 560; 33 T. L. R. 301

Negligence.

See **NEGLIGENCE**, col. 287.

Patent.

— Engineer—Invention patented by servant—Servant trustee for master.
See **PATENT**, col. 300.

Railway Company.

Liability for acts of servants—Implied authority—Arrest of passengers—Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 103, 104—Regulation of Railways Act, 1889 (52 & 53 Vict. c. 57), s. 5—Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19).

The power given to ry. cos. by ss. 103 and 104 of the Railways Clauses Consolidation Act, 1845, to arrest passengers for travelling without having paid the proper fare with intent to avoid payment thereof was determined by the passing of the Regulation of Railways Act, 1889, the code contained in ss. 103 and 104 of the Act of 1845 with regard to that offence being replaced by the code contained in s. 5 of the Act of 1889, under which there is only a power of arrest if a passenger refuses to give his name and address after having failed to produce a ticket and to pay his fare.

The plt. was the holder of a first-class season ticket between certain stations upon the defts.' ry. Upon the plt.'s arrival at a station at which the ticket was available, after he had passed the ticket barrier and had shown his ticket to a ticket collector but before he had reached the exit from the station, a porter in the employment of the defts. took him by the arm and in the presence of other persons charged him with having travelled first class with a third-class ticket. In an action against the defts. for assault, false imprisonment, and slander:—

Held, that, the offence of travelling without a proper ticket not being punishable by imprisonment, the claim in respect of the slander would not lie in the absence of proof of special damage.

Michael v. Spiers & Pond (1909) 101 L. T. 352 and *Hellwig v. Mitchell* [1910] 1 K. B. 609 followed.

Held, further, that, as the defts. had no power to arrest the plt. for the offence with which the porter charged him, they could not be taken to have impliedly authorized the porter to arrest him, and that the action must be dismissed.

Poultton v. London and South Western Ry. Co. (1867) L. R. 2 Q. B. 534 followed. *ORMISTON v. GREAT WESTERN RY. CO.* - *Rowlatt J.*

[1917] 1 K. B. 598; 86 L. J. (K. B.) 759; 116 L. T. 479; [1917] W. N. 40; 33 T. L. R. 171

MASTER AND SERVANT—continued.**Seduction.**

See SEDUCTION, col. 382.

Trade Secret.

Information acquired during service—Confidential employment—Injunction—Secret formulae—Book of formulae taken by servant—Order to deliver up.

A servant in a confidential position who has expressly or impliedly contracted that he will not disclose his master's secrets can be restrained from so doing.

The works manager of a co. manufacturing rubber goods and rubber compounds was intrusted with the care of a book of formulae of secret processes for the purpose of carrying out his duties. On leaving the co.'s employment he took this book away with him, and shortly afterwards entered the employment of a rival co. It was ordered that he should deliver up the book of formulae, and all copies or extracts therefrom, to the co. *ALPERTON RUBBER CO. v. MANNING* - Peterson J. 86 L. J. (Ch.) 377; 116 L. T. 499; [1917] W. N. 76; 33 T. L. R. 205

Workmen's Compensation.

See WORKMEN'S COMPENSATION.

MATERIALITY—Evidence—Perjury.

See CRIMINAL LAW, col. 132.

MATRIMONIAL CAUSES ACTS.

See DIVORCE, col. 142.

MEASURE—Supply by—Water.

See WATER, col. 454.

MEASURE OF DAMAGES.

See LANDLORD AND TENANT, col. 244.
SALE OF GOODS, col. 367, and
SHIPPING, col. 407.

MEETING—Company.

See COMPANY, col. 91.

MEMBER—Friendly society—Dispute.

See FRIENDLY SOCIETY, col. 182

—Stock Exchange—Defaulting.

See BANKRUPTCY, col. 59.

MEMORANDUM OF ASSOCIATION—Company.

See COMPANY, col. 92.

MENS REA.

See CRIMINAL LAW, col. 127.

MERCHANT SHIP—Racing yacht—Hague Convention.

See PRIZE COURT, col. 326.

MERCHANT SHIPPING ACT, 1894.

See SHIPPING, col. 418.

MERE VOLUNTEER—Master and servant—Common employment.

See MASTER AND SERVANT, 272.

MERGER—Intention—Interest—Subsequent dealings—Evidence.

Two properties A and B having been included in one lease at a low ground rent and subsequently separately assigned by the lessees, the reversioners in fee took an assignment of property A and four other leasehold properties for the residue of the respective terms.

There was no direct evidence that they then had any intention against merger.

About nine months later the reversioners by a mortgage, which recited that the term in property A and the reversion in fee subject to the term were vested in them as tenants in common, mortgaged the term and the entire reversion separately:—

Held, that, having regard to the form of the mortgage and the covenants for title therein contained, the mortgage was admissible as evidence not only that the reversioners then believed that there was no merger, but that such was their intention at the time when they took the assignment of the term:—

Held, therefore, on the construction of the assignment and the mortgage, that the term had not merged.

Decision of Astbury J. [1917] 1 Ch. 147 reversed. *In re FLETCHER*. *READING v. FLETCHER* - G. A. [1917] 1 Ch. 339; 86 L. J. (Ch.) 317; 116 L. T. 460; [1917] W. N. 57; 61 S. J. 267

METROPOLIS.

See LONDON and RATES.

MILITARY COURT OF INQUIRY—Statement by accused—Admissibility.

See CRIMINAL LAW, col. 128.

MILITARY LAW.

See ARMY.

MILITARY OR USURPED POWER.

See INSURANCE (FIRE), col. 202.

MILITARY POWER—Loss or damage caused by—Insurance.

See LANDLORD AND TENANT, col. 245.

MILITARY SERVICE.

See ARMY, col. 31, *CONTRACT*, col. 110, and *MASTER AND SERVANT*, col. 273.

MILK.

See ADULTERATION.

“MINER”—High Peak mining customs.

See MINES, col. 277.

MINERAL—Brine.

See REVENUE, col. 362.

MINERAL RIGHTS DUTY—Revenue.

See REVENUE, col. 362.

MINES.

Coal Mine, col. 277.

Goldmining Claims, col. 277.

High Peak Mining Customs, col. 277.

Support, Right to, col. 278.

MINES—continued.**Coal Mine.**

Offence—Person having lucifer match in mine—Whether search condition precedent to prosecution—*Coal Mines Act, 1911* (1 & 2 Geo. 5, c. 50), ss. 35, 75, 101, 103.

Sect. 35, sub-s. 1, of the Coal Mines Act, 1911, is an absolute prohibition against a person having in his possession, in a mine where safety lamps are required to be used, any lucifer match or any of the other articles mentioned. A person, therefore, who infringes this provision is guilty of an offence under the Act, and in proceedings in respect thereof it is not necessary to show that the accused had been searched under sub-s. 2 before he commenced work or that he had been searched by the person duly appointed to make searches. *JONES v. LEWIS*

Div. Ct. [1917] 2 K. B. 117; 86 L. J. (K. B.) 782; 117 L. T. 127; [1917] W. N. 146; 81 J. P. 131

Goldmining Claims.*Sale—Construction of agreement.*

The plts. were the assignees of the benefit of an agreement whereby the plts.' assignors sold to the defts. a block of goldmining claims in Rhodesia and whereby it was agreed that the plts.' assignors should retain a half-share of any minerals that might be found in the block and of the proceeds of the sale of such minerals. Before the date of the agreement the defts. had opened up a discovery reef, which extended beyond the vertical limits of its own block and under the block referred to in the agreement, and after the date of the agreement the defts. in working the discovery reef extracted a large quantity of ore from under the block referred to in the agreement. By the law of Rhodesia the owner of a discovery reef has a right to pursue it extra-laterally even under the claims of other persons, but the plts. contended that under the agreement they were entitled to half the proceeds of the minerals found by the defts. in or under the area of the block referred to in the agreement, even if such minerals were found in the extra-lateral part of the discovery reef, and the plts. brought an action against the defts. for a declaration to that effect:—

Held, that on the construction of the agreement the plts.' rights were limited to half the proceeds of minerals extracted from the block in dispute under the mining rights formerly exercisable by their assignors, and that at the date of the agreement the plts. had not such an interest in the soil of the block in dispute as to make them owners of the subjacent minerals, and therefore the action failed.

Decision of Eve J., 33 T. L. R. 99, affirmed. *THE AMALGAMATED PROPERTIES OF RHODESIA* (1913), Ld. v. *THE GLOBE AND PHOENIX GOLD MINING CO.* - - - C. A. 33 T. L. R. 469

High Peak Mining Customs.

Small Barmote Court—Jurisdiction—“Miner”—*High Peak Mining Customs and Mineral Courts Act, 1851* (14 & 15 Vict. c. 94), Sched. I., art. 16.

Although a person who mines for a mineral other than lead ore is not ipso facto a “miner”

MINES (High Peak Mining Customs)—*Contd.*

within the meaning of Sched. I., art. 16, of the High Peak Mining Customs and Mineral Courts Act, 1851, if in the course of working such a mineral he in fact takes lead ore he thereby becomes a miner, none the less because he did not start his mining operations with the intention of taking it. *REX v. SANDERS*

Div. Ct. [1917] 2 K. B. 390; 86 L. J. (K. B.) 1316; 117 L. T. 410; [1917] W. N. 157

Support, Right to.

Surface owner—Partition—Exception of mines and minerals—Power to enter for the working of the minerals “in as full and ample a manner as if these presents had not been made”—*No compensation clause—Implied right to let down surface.*

By a deed of partition made in 1738 certain lands were partitioned in severalty between certain tenants in common, with an exception and reservation of the mines and minerals in and upon the said lands, with liberty for the tenants in common, their heirs and assigns, to “enter on the said premises to work and convert the same to the most advantage for their mutual benefit.” The deed contained a further provision and declaration that the mines and minerals already opened and unopened in, upon, or under the said lands were thereby expressly reserved and excepted out of the partition of the said lands for the joint profit, benefit, and advantage of the tenants in common, their heirs and assigns, with full and free liberty for the tenants in common, their heirs and assigns, their agents, servants, workmen, horses, cattle, carts and carriages whatsoever, at all times to enter upon the said lands and every part and parcel thereof for the working, carrying, and converting of the said mines and minerals for the equal and joint benefit, profit, and advantage of the tenants in common, their heirs and assigns, and every person lawfully claiming under them respectively, “in as full and ample a manner to all intents and purposes as if these presents and the partition and division” of the said lands had not been done and made. The deed contained no clause providing for compensation for injury to the surface. The plts. derived title to the land, and the deft. co. derived title to the mines and minerals through this deed. On a question of law whether the deft. co. was entitled to work the minerals so as to cause the surface to subside:—

Held, by the C. A., affirming the decision of Younger J. (115 L. T. 774) that as a matter of construction the words “in as full and ample a manner to all intents and purposes as if these presents, &c., had not been done and made” applied to the power of working the minerals and not merely to the power of entry on the land, and that on this construction the plts.' common law right to support was by necessary implication displaced, and that the deft. co. had a right to work the minerals so as to cause the surface and buildings thereon to subside.

The cases considered and *Beard v. Moira Colliery Co.* [1915] 1 Ch. 257 followed. *DAVIES v. POWELL DUFFRYN STEAM COAL CO.*

C. A. [1917] 1 Ch. 488; 86 L. J. (Ch.) 298; 116 L. T. 520; [1917] W. N. 58

MINISTER OF MUNITIONS—Power of, to order sale of plant—Construction of reservoir.

See **CONTRACT**, col. 108.

MINOR — Workmen's compensation — Recorded agreement.

See **WORKMEN'S COMPENSATION**, col. 502.

MISDESCRIPTION—Vendor and purchaser.

See **VENDOR AND PURCHASER**, col. 448.

MISLEADING AFFIDAVIT — Rule nisi — Prohibition—Summary discharge of rule—Inherent power in Court.

See **REVENUE**, col. 359.

MISREPRESENTATION—Rescission.

See **VENDOR AND PURCHASER**, col. 448.

MISSTATEMENT OF FACT—Insurance.

See **INSURANCE (LIFE)**, col. 203.

"MISSTATEMENT OR ERROR IN THE DESCRIPTION OF THE PREMISES."

See **VENDOR AND PURCHASER**, col. 450.

MISTAKE—Disentailing deed—Rectification.

See **TAIL, TENANT IN**, col. 429.

— Law—Money paid by.

See **EMERGENCY LEGISLATION**, col. 172.

MITIGATION—Punishment—Evidence.

See **CRIMINAL LAW**, col. 132.

MIXED MARRIAGE — Mahomedan domiciled in India and Christian woman.

See **DIVORCE**, col. 146.

MODUS OR COMPOSITION.

See **LIMITATIONS, STATUTES OF**, col. 257.

MONEY-LENDER—Bankruptcy.

See **BANKRUPTCY**, col. 62.

Business carried on elsewhere than at registered address—Avoidance of transaction—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 2.

Appeal from a decision of the C. A. ([1916] 2 K. B. 719) reversing a decision of Ridley J.

The question for decision was whether an isolated money-lending transaction, carried out by a registered money-lender at a place other than his registered address, was void under s. 2, sub-s. 1 (b), of the Money-lenders Act, 1900.

Ridley J. held that the transaction was void under the Money-lenders Act, 1900, but the C. A. reversed this decision.

The H. L. allowed the appeal. **CORNELIUS v. PHILLIPS** — H. L. (E.) [1917] W. N. 371; 34 T. L. R. 116; 62 S. J. 140

Registration—Partnership—Registered separately—Company formed of business of borrower—Salary to money-lenders as directors—No liability to attend to business—Debt as security—Fraud—Security and loan void—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 2, sub-s. 1 (c).

T. was in need of money for the purpose of his business, and asked the plt. to lend him the money; but the plt. said he was not a money-

MONEY-LENDER—continued.

lender, but if T. would form his business into a co. the money could be lent. The plt. introduced T. to B. as his partner. Both the plt. and B. were separately registered as money-lenders. The business was formed into a co., and a debenture of the same amount as the loan was issued to T. containing a condition that principal and interest should become payable if execution was levied. The plt. and B. lent the money in equal moieties, and were appointed as managing directors of the co. at a salary of 12½ 10s. each per week, but were exonerated from any obligation to attend to the business of the co. The business was ample security for the loan, for which no interest was charged. T. subsequently transferred the debenture to the plt. The plt. and B., their salary being in arrear, issued a writ, obtained judgment on it, and issued execution. The plt. then brought an action on his debenture for the usual relief; and a receiver was appointed, who sold the business for more than the amount of the loan. The plt. brought this action claiming that the debenture constituted a charge on all the property of the co., and the co. counterclaimed that the debenture and transfer were void and the transaction a fraud on the co. :—

Held, that the transaction was a partnership transaction by the plt. and B., and also was a money-lending transaction, and that the loan, having been made by an unregistered partnership was void, under s. 2, sub-s. 1 (c), of the Money-lenders Act, 1900, both as to the loan itself and the security taken for it; further, that the device resorted to was fraudulent, as it concealed the real character of the transaction, the co. having been created only for the purpose of being defrauded by giving security over all its assets for a debt which was not the co.'s debt and to pay a large salary a year to directors who posed as genuine officers of the co., and that the judgment obtained might be set aside on the ground of fraud. *In re TAYLOR (CHARLES) (LONDON), LD. MILLER v. TAYLOR (CHARLES) (LONDON), LD.* — Neville J. 83 L. J. (Ch.) 49; 115 L. T. 756

MONEY-LENDERS ACT, 1900.

See **BANKRUPTCY**, col. 62.

"MORE OR LESS ABOUT."

See **SALE OF GOODS**, col. 372.

MORTGAGE.

Accounts, col. 281.

Contract. See **CONTRACT**.

Costs, col. 281.

Emergency Legislation. See **EMERGENCY LEGISLATION**.

Equitable Mortgage, col. 281.

Foreclosure, col. 282.

Life Policies. See **ALIEN ENEMY**.

Notice. See below, **Personalty**.

Parties. See **PARTIES**.

Personalty, col. 282.

Registration of Title. See **STRAITS SETTLEMENTS**.

MORTGAGE—*continued*.**Accounts.**

Mortgagee's action—Banker and customer—Mortgage to secure overdrafts—Appointment of receiver—Lien for salvage payments—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 24, sub-s. 8.

YOURELL v. HIBERNIAN BANK, LD.
K. L. (L.) [1917] W. N. 297

Contract.

— **Illegality.**

See **CONTRACT**, col. 107.

Costs.

Mortgage suit—Costs of puisne incumbrancer—Priority—Special circumstances.

The plt., who was seventh in priority as an incumbrancer on lands of the defts., instituted an action to raise the amount of his charge and obtained a primary decree for sale. The lands were held under a tenancy from year to year, and notice of intention to sell having been served upon the landlord, the latter exercised his right of pre-emption, and offered 200*l.* as the pre-emption price. The true value of the lands was subsequently ascertained by the Court of the Irish Land Commission to be 500*l.*, the Land Commission proceedings having been carried through by the plt. without any order in the suit directing him to do so. The sum of 500*l.* was only sufficient to discharge the first five incumbrances and portion of the sixth, no part of the plt.'s demand being reached. The owner of the sixth incumbrance had proved his claim thereto, but otherwise took no part in the suit:—

Held, by the C. A. (affirming the judgment of Barton J.), that the plt. was only entitled to be paid his costs in the same priority as his incumbrance, and that no special circumstances existed entitling the plt. to priority in payment of his costs.

Per RONAN L.J.: In such a case the Court will not enter upon an inquiry as to whether the puisne incumbrancer had a reasonable expectation of being paid when he commenced his proceedings. O'MEAGHER v. DALY

C. A. (Ir.) [1917] 1 I. R. 493

Emergency Legislation.

See **EMERGENCY LEGISLATION**, col. 160.

Equitable Mortgage.

Priority—Negligence—Possession of title deeds—Presumption—Equities in all respects equal—“Qui prior est tempore potior est jure.”

The plts. claimed an account of what was due to them under an equitable charge of Jul. 23, 1901, and a declaration that their charge ranked in priority to the subsequent charge of the defts. W. and A. and consequential relief. The defts. submitted that, by reason of the negligent conduct of the person to whom the charge was given in leaving the title deeds with his solicitor, the solicitor was enabled fraudulently to obtain from the defts. 1000*l.* on the security of a deposit of title deeds of Sept. 12, 1910, and that their security should rank in priority to that of the plts.

MORTGAGE (Equitable Mortgage)—*continued*.

Eve J. said it was a contest between two equities, neither of the parties having any legal estate. The security of the plts. was prior in time. The substantial ground on which the defts. based their claim to a better equity than that of the plts. was the possession of the title deeds, and, as between equitable mortgages or depositors, a presumption of superiority was raised in favour of the one who had possession of the deeds. But that was only a presumption, not a conclusive factor. His Lordship, on the facts and correspondence, held that there was not such negligence or carelessness established on the part of the first equitable mortgagee as would postpone his right as prior incumbrancer to that of the later incumbrancer. In his opinion the equities were equal, and the plts. could not be said to have contributed to the defts. getting possession of the deeds. In these circumstances the last factor had to be called into existence, and that admittedly was the priority in date. JONES v. COOKE-HILL'S TRUSTEE - - - Eve J. [1917] W. N. 73

Foreclosure.

See **CONVERSION**, col. 113, and **EMERGENCY LEGISLATION**, col. 160.

Life Policies.

See **ALIEN ENEMY**, col. 13.

Notice.

See below, **Personalty**, col. 282.

Parties.

See **PARTIES**, col. 296.

Personalty.

Assignment of interest in—Notice to trustees of the fund—Subsequent payment of income to mortgagor—Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35), s. 3.

P., who was entitled to a life interest in the income of certain stocks and other personal estate vested in the trustees of a settlement, assigned all his interest under the settlement to the plt. by way of mortgage to secure a principal sum and interest. Shortly afterwards the plt. gave to the trustees the ordinary notice of the mortgage, but did not require them to pay the income to himself, and they paid it to P. for about a year and a half, when the plt. brought an action against P. and the trustees claiming foreclosure of the mortgage and personal payment by the trustees of the income as from the date of the notice:—

Held, that the giving of the notice was not equivalent to taking possession of the mortgaged property, but had no further effect in depriving the mortgagor of the receipt of income than notice of a similar mortgage of real estate, and that the claim against the trustees failed.

Held, also, that, if the decision was wrong, the case was one in which the Court would grant relief to the trustees under s. 3 of the Judicial Trustees Act, 1896, and that it was not necessary to plead the Act as a defence.

MORTGAGE (Personalty)—continued.

In re PAWSON'S SETTLEMENT. HIGGINS v. PAWSON - Sargent J. [1917] 1 Ch. 541; 86 L. J. (Ch.) 380; 116 L. T. 559; [1917] W. N. 87; 33 T. L. R. 233

Registration of Title.

— Statutory form—Unregistered agreement—Contractual right.
See STRAITS SETTLEMENTS, col. 427.

MOTOR CAR—Bath-chair or ambulance propelled by electricity—Registration—Licence—Locomotions on Highways Act, 1896 (59 & 60 Vict. c. 36), s. 1—Motor Car Act, 1903 (3 Edw. 7, c. 36), s. 20.

A bath-chair or ambulance designed for invalids and propelled by electricity at an average speed of two miles an hour falls within the definition "motor car" in s. 20 of the Motor Car Act, 1903, and must be registered, and its driver must be licensed. *ELIESON v. PARKER*

Div. Ct. 15 L. G. R. 531; 117 L. T. 276; 33 T. L. R. 380; 81 J. P. 265; 61 S. J. 559

— Carriage on deck.

See INSURANCE (MARINE), col. 207.

MOTOR CARS—Lights.

See NEGLIGENCE, col. 288.

MOTOR OMNIBUSES — Country roads — Extraordinary traffic.

See HIGHWAY, col. 190.

MUNICIPAL CORPORATION—Electric light company—Agreement—Right to purchase system—Severance of municipal district.

See CANADA, col. 69.

MUNITIONS—Minister of—Construction of reservoir—Stoppage of works by.

See CONTRACT, col. 108.

NAVAL AND MILITARY OPERATIONS — Prize bounty.

See PRIZE COURT, col. 329.

NAVAL PRIZE ACT, 1864.

See PRIZE COURT, col. 329.

NAVIGATION LIGHTS—Absence of—Admiralty instructions.

See SHIPPING, col. 413.

"NAVIRE DE COMMERCE" — Hague Convention.

See PRIZE COURT, col. 326.

NEGLECT, WILFUL—Husband and wife

See DIVORCE, col. 146.

NEGLECT.

Bank. See BANK.

Building, Defective State of. col. 284.

Common Employment. See MASTER AND SERVANT.

Concealed Danger. col. 285.

Contract. col. 285.

NEGLECT—continued.

Death by. See CANADA.

Dock. col. 285.

Dog. See above, Contract.

Duty. col. 286.

Highway. col. 287.

Innkeeper. See INNKEEPER.

Invitee. col. 290.

Licensee. See above, Dock.

Lloyd's Register. See above, Duty.

Malicious Act of Third Party. See above, Highway.

Master and Servant. col. 290.

Pilot. See SHIPPING.

Bank.

— Customer.

See BANK, col. 55.

Building, Defective State of.

Building let in tenements—Defective staircase—Injury to wife of tenant—No concealed trap.

The plt. was the wife of the tenant of a room on the first floor of a building which was let by the defts. in separate tenements. Several of the tenements, including that of the plt., were approached by a common staircase. The plt. went out of her room to the landing in order to draw water from a tap on the landing. She found that a tap on the landing immediately above had been left running, and she went to the upper landing to stop it. On the way down she slipped on a defective step and suffered personal injuries. She sued the defts. for damages for negligence:—

Held, that proof of the existence of a concealed trap was essential to the cause of action, and as the plt. could not show that there was a concealed trap she was not entitled to recover. *GROVES v. WESTERN MANSIONS, LD.*

Div. Ct. 33 T. L. R. 76

Defect in roof of house—Loose cornice—Liability of owner and occupier—Injury to invitee through fall of cornice.

The plt. went to a house owned and occupied by one of the defts., a married woman, to collect money due to him from her. While he was standing upon the doorstep a piece of a projecting cornice from the top of the house fell on his head and injured him. The house was in apparently good repair, and the deft. did not know of the defect in the cornice. The defect, which was an old one, was due to the action of the weather upon the cement. In an action brought by the plt. against the deft. to recover damages for the injuries he had suffered:—

Held, that the plt. was not entitled to recover, inasmuch as the deft.'s duty was to take reasonable care to keep the house in such a state of repair as not to expose the plt. to any hidden danger of which the deft. was aware, or ought to have been aware; and the plt. had not shown that she was aware, or ought to have been aware, of the decay of the cornice.

NEGLIGENCE (Building, Defective State of)—
continued.

Indemnitor v. Dames (1866) L. R. 1 C. P. 274; (1867) L. R. 2 C. P. 311 followed.

Tarry v. Ashton (1876) 1 Q. B. D. 314 distinguished. *PRITCHARD v. PETO*

Bailhache J. [1917] 2 K. B. 173; 86 L. J. (K. B.) 1292; 117 L. T. 145; 15 L. G. R. 860

Common Employment.

See **MASTER AND SERVANT**, col. 272.

Concealed Danger.

See above, **Building, Defective State of**, col. 284, and below, **Dock**, col. 285, and **INNKEEPER**, col. 200.

Contract.*Care of dog—Construction of contract.*

The plt. placed a dog in a dogs' home belonging to the defts. on the terms of a document which stated that "every possible care and attention is given to animals" and that the defts. "wish it clearly to be understood that they will not be responsible for . . . loss from . . . illness or death of any animal from whatever cause arising."

The dog took a chill and was removed to another home, and it afterwards caught pneumonia and distemper and died. In an action for negligence:—

Held, that under the above document the intention was that the defts. should not be subject to any legal responsibility, and therefore the plt. could not recover. *BARTON v. RUINSLIP DOG SANATORIUM, LD.* Div. Ct. 33 T. L. R. 458

Death by.

See **CANADA**, col. 70.

Dock.

Duty of owners towards persons using their premises—Workman employed by shipowner—Licensee or invitee—Injury by accident—Concealed danger—Award of compensation—Liability of dock owner—Claim by employer to be indemnified—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 6.

In Mar., 1915, a workman was employed by the plts. as a tallyman to check the cargo being loaded into one of the plts.' ships lying at a quay in the defts.' dock. The work was usually done at the quayside, but as the night of Mar. 16 was cold and the man had been at work for many hours, he elected to work in a warehouse belonging to the defts., from which the goods were being taken. While there he fell down the well hole of a lift and was injured. The workman having obtained an award of compensation under the Workmen's Compensation Act, 1906, against the plts., the plts. brought this action under s. 6 of the Act against the defts., as owners of the premises, claiming to be indemnified on the ground that the accident was attributable to the negligence of the defts. in breach of their duty to the workman. The jury, by the answers to questions left to them at the trial, found (inter alia) that persons using the

NEGLIGENCE (Dock)—continued.

warehouse were not reasonably protected from falling into the lift well, owing to the negligence of the defts.' servants, but that the lift well was not a concealed danger at the time of the accident:—

Held, that the workman was not an invitee to the defts.' warehouse, but at most a licensee, and that, as there was no concealed danger, the defts. had not been guilty of any breach of duty towards the workman, and the action failed. *WILSON, SONS & CO. v. BARRY RY. CO.*

C. A. [1917] W. C. & Ins. Rep. 65; 86 L. J. (K. B.) 432; 116 L. T. 71; 10 B. W. C. C. 24

Harbour board—Fitness of quay to receive goods—Warranty—Liability for damage—Effect of statutes governing the harbour board.

Defts. were the owners and occupiers of the docks and quays at Liverpool. In Oct., 1915, a cargo of copper barilla in the form of powdered ore was unloaded on a certain space of quay. In the course of the operations some of the bags containing the ore broke, with the result that some of the powder settled on the space of the quay and in the interstices. In Nov., 1915, another vessel arrived in Liverpool with a cargo of hides for the plts. This cargo was unloaded on the same quay space on which the copper ore had been unloaded, and the hides came into contact with the surface of the quay and absorbed some of the powdered ore, in consequence of which they were damaged. The jury found that the defts. were negligent:—

Held, that there was evidence to support the jury's finding, and that the statutes dealing with the defts.' docks did not relieve the defts. from the duty of care with respect to the fitness of the quay, nor did they preclude the implication of warranty as to the fitness of the quay to receive the hides. The plts. were, therefore, entitled to recover.

Quære, whether the principle of *Francis v. Cockrell*, (1870) 5 Q. B. 501, should not be applied to the case of the occupiers of docks who invite persons to use for reward the facilities provided. *LIEBIG'S EXTRACT OF MEAT CO. v. MERSEY DOCKS AND HARBOUR BOARD* and *WALTER NELSON & SONS, LD.* - *McCardie J.* 117 L. T. 380; 33 T. L. R. 354

Dog.

— Care of.

See above, **Contract**, col. 285.

Duty.

Contract for building steamship—Requirement of compliance with Lloyd's Rules—Certificate by Lloyd's—Alleged non-compliance—Action against Lloyd's.

The plts. made a contract with a firm of shipbuilders that the firm was to build for the plts. a steamship in conformity with Lloyd's Rules and in accordance with a specification providing that it was to be 100 A1 with widely spaced hold pillars. The management committee of Lloyd's Register approved of the plans and supervised the building and gave a certificate that the vessel was of the 100 A1 class with widely spaced hold pillars. On her first voyage the foundations of some of the hold pillars gave

NEGLIGENCE (Duty)—continued.

way and the vessel was thereby injured. In an action by the plts. against the chairman, deputy-chairman, and trustees of Lloyd's Register for damages for alleged breach of duty or negligence in passing the vessel as being in accordance with Lloyd's Rules when she was not:—

Held, that the plts. had no contract with the defts., and the defts. owed no duty to the plts., and therefore the plts. were not entitled to recover. *AUSTRALIAN STEAM SHIPPING CO. v. DEVITT* - - - **Sankey J. 33 T. L. R. 178**

Gratuitous drive in motor car—Duty to take reasonable care—Action for personal injuries.
KARAVIAS v. CALLINICOS - - - **C. A. [1917] W. N. 323**

Highway.

Cattle—Drover's negligence—No requirement of licence—Whether drover an independent contractor.

In a place where a drover of cattle does not require to have a licence he is the servant of the person employing him to drive cattle along the highway and is not an independent contractor, and therefore the employer is liable for the drover's negligence. **TURNBULL v. WIELAND** - - - **Bailhache J. 38 T. L. R. 143**

Colt, Unbroken, loose on highway at night—Injury to person using highway.

A young unbroken colt belonging to the deft., a farmer, was being taken along a highway on a dark night. It was allowed to go loose behind a mare which was being led and in front of a trap driven by the deft. The plt., who was riding a bicycle, was coming from the opposite direction when the colt, being startled by the light on the bicycle, suddenly ran across the road and collided with and injured the plt. No warning was given by the deft. to the plt. of the presence of the colt. In an action to recover damages the county court judge gave judgment for the plt. He found that it was well known, especially to a farmer, that a young unbroken colt when loose on the highway is apt, when startled, to rush about and to kick, and that there is grave risk of danger to the public in allowing such a colt to go loose on the highway in the dark; and he accordingly held that the deft. was guilty of negligence in allowing the colt to be on the highway in the dark without being under proper control and in failing to give warning to the plt. of the presence of the colt:—

Held, that the county court judge was right in so holding. **TURNER v. COATES**

Div. Ct. [1917] 1 K. B. 670; 86 L. J. (K. B.) 321; 115 L. T. 766; 33 T. L. R. 79

Highway authorities—Successive liability for acts of former authority—Parish surveyors—Highway board—Rural district council—Practice—Admission of further evidence in Court of Appeal—Highway Act, 1835 (5 & 6 Will. 4, c. 50)—Highway Act, 1862 (25 & 26 Vict. c. 61), ss. 11, 39—Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 25—R. S. C., 1883, O. LVIII., r. 4.

The plt. in this case was driving upon a high-

NEGLIGENCE (Highway)—continued.

way within the defts.' district, of which they were the highway authority. His pony suddenly put his foot through the crust of the highway and fell; the plt.'s arm was broken and his pony injured. He brought an action against the defts. for 170*l.* damages, alleging that the accident was caused by the improper construction by the defts. of a drain under the highway. At the hearing he failed to prove that the defts. had constructed the drain in question, but by arrangement he was allowed, without formal amendment of the pleadings, to contend that the drain was made by the defts.' predecessors in title" (by which was intended their predecessors in the office of highway authority), and that the defts. were liable for their predecessors' misfeasance. On this question the jury found that the accident was caused by the negligent construction of the drain and that the drain was constructed by some of the defts.' predecessors in title, and they assessed the damages at 100*l.* On those findings Lord Coleridge J. entered judgment for the plt. The defts. appealed:—

Held by the C. A., that, as there was no right of action for damages against a highway authority until actual damage had accrued, the preceding highway authorities were not under any liability which could be passed on to their successors; and, further, that, on the true construction of the Acts of Parliament creating the successive highway authorities, there was nothing to make any such authority liable for acts of misfeasance committed by its predecessors.

At the close of their argument respondent's counsel applied for leave, under O. LVIII., r. 4, to call further evidence that the defts. had in fact made the drain in question. The action was tried with the jury in Feb., 1916, and heard on further consideration before the judge on Mar. 29. In the interval some persons residing in the neighbourhood, who had read the report of the case in local papers, offered evidence that the defts. had made the drain. The plt. obtained affidavits in May and in Jul., after the defts. had given notice of appeal, and gave them notice that he should apply to call further evidence, but took no further steps until the appeal came on.

The Court refused the application on the grounds that the plt. had not shown sufficient promptness in applying, and that the Court were not satisfied that he could not with due diligence have discovered the evidence before the hearing.

Observations of Lindley L.J. in *In re Copiapo Mining Co.* (1894) 10 T. L. R. 180; *Annual Practice*, 1917, p. 1121, discussed. **NASH v. ROCHFORD R. D. C.** - - - **C. A. [1917] 1 K. B. 384; 86 L. J. (K. B.) 370; 15 L. G. R. 103; 116 L. T. 129; [1916] W. N. 426; 81 J. P. 57**

Motor cars—Lights—Negligent driving on highway by night—Lorry carrying one lamp as required by Order—Two lights instead of one desirable in certain circumstances—Evidence on which a finding of negligence could be supported—Locomotives on Highways Act, 1896 (59 & 60 Vict. c. 36), s. 2—Motor Cars Use and Construction Order, 1904, art. I.; art. II., 7 (1.).

NEGLIGENCE (Highway)—continued.

In an action in the county court to recover damages to a steam lorry which had been run into in a narrow road after dark by a petrol lorry belonging to the defts., the plt. alleged, among other particulars of negligence, that the defts.' petrol lorry was burning but one lamp.

The deputy county court judge found the defts. guilty of negligence, but did not specify in what respect, and gave judgment for the plt. for the damages agreed.

The Div. Ct. were of opinion that although the burning of one lamp was sufficient to comply with the requirements imposed by s. 2 of the Locomotives and Highways Act, 1896, yet this did not affect the defts.' common law liability to take all reasonable precautions against a collision on the highway, and that in the circumstances of this case the carrying of but one lamp by the defts. might amount to negligence:—

Held, there was evidence on which the county court judge could decide in favour of the plt.

Judgment of the Div. Ct., 15 L. G. R. 119, affirmed. *WINTLE v. BRISTOL TRAMWAYS AND CARRIAGE CO.* - C. A. 15 L. G. R. 521; 86 L. J. (K. B.) 936; 117 L. T. 238; [1917] W. N. 163

— Obstruction.

See **HIGHWAY**, col. 191.

Street lighting—Trees planted in highway and protected by spiked guards—Personal injury—Local government—Urban authority—Street lighting prohibited under Defence of Realm Regulations—Duty of urban authority—Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), s. 43.

The defts., an urban authority, acting under the provisions of s. 43 of the Public Health Acts Amendment Act, 1890, planted trees in certain of their highways, and surrounded each tree with an iron spiked guard. Subsequently to the erection of the guards an order was promulgated by the chief constable, acting under the Defence of the Realm Regulations, by which all street lights in the defts.' area were ordered to be extinguished at a certain hour. The plt., who was crossing a road at night in the darkness, came into contact with one of the guards and suffered very serious injury. In an action to recover damages for negligence, the jury found that the guard was dangerous in the circumstances of the darkness that existed, and that the defts. had not taken reasonable measures to neutralize the danger; the judge entered judgment for the plt.:—

Held, that after the promulgation of the lighting order there was a continuing duty on the defts. to take reasonable measures to prevent the guard from being a danger to the public lawfully using the road, and that the plt. was entitled to maintain his action.

Great Central Ry. Co. v. Hewlett [1916] 2 A. C. 511 distinguished. *MORRISON v. SHEFFIELD CORPORATION* - C. A. [1917] 2 K. B. 866; 86 L. J. (K. B.) 1456; 15 L. G. R. 667; 117 L. T. 520; 81 J. P. 277; 33 T. L. R. 492; 61 S. J. 611

Water box in pavement—Iron lid or covering sticking up—Accident to passers by—Action for negligence—Proximate cause of damage—Malicious act of third party.

NEGLIGENCE (Highway)—continued.

Where the proximate cause of the raising of an iron plate, lid, or covering of a water apparatus in a street of the metropolis, above the level of the pavement so as to be a dangerous obstruction by sticking up, is the malicious act of a third person against which precautions would have been inoperative, the Metropolitan Water Board is not liable to any one thrown down by it and hurt, in the absence of a finding that the occurrence could or ought to have been foreseen and provided against.

Although bound to exercise all reasonable care, the Board is not in the absence of such a finding responsible for damage caused by the malicious acts of third persons. *SIMPSON v. METROPOLITAN WATER BOARD* - Shearman J. 15 L. G. R. 629

Innkeeper.

— Guest — Personal injuries — Fitness of premises—Independent contractor.
See **INNKEEPER**, col. 200.

Invitee.

See above, **Building, Defective State of** col. 284, and **Dock**, col. 285.

Licensee.

See above, **Dock**, col. 285.

Lloyd's Register.

See above, **Duty**, col. 286.

Malicious Act of Third Party.

See above, **Highway**, col. 287.

Master and Servant.

See above, **Highway**, col. 287, and **MASTER AND SERVANT**, col. 272.

Pilot.

— Responsibility for.
See **SHIPPING**, col. 410.

NEGOTIATION WITHOUT LITIGATION—

Documents obtained by—Lien—Solicitor.
See **SOLICITOR**, col. 423.

NET PROFITS—Excess profits tax—Deduction.

See **COMMISSION**, col. 83.

NEW TRIAL—Appeal.

See **COUNTY COURT**, col. 121, and **MAINTENANCE**, col. 270.

NEW ZEALAND—Patent—Infringement.

See **PATENT**, col. 299.

— Will—Charitable gift.

See **CHARITY**, col. 80.

NEXT OF KIN.

See **LIMITATIONS, STATUTES OF**, col. 258 and **SETTLEMENT**, col. 386.

NON-DELIVERY—Consignment.

See **RAILWAY**, col. 338.

NON-DISCLOSURE—Knowledge as to value

—Contract for sale of trust property.
See **SOLICITOR**, col. 423.

NON-PROVIDED SCHOOL.

See **EDUCATION**, col. 153.

NON-RESIDENT—Super-tax—Property in the United Kingdom—Chargeability.

See **REVENUE**, col. 361.

NON SERVICE—Copy of notice of appeal and case stated.

See **ARMY**, col. 45.

NOTICE—Appeal—Service.

See **ARMY**, col. 44.

—Application—Quarter session—Highway—Diversion.

See **HIGHWAY**, col. 189.

—Contract—Intention to cancel—Sale of goods.

See **SALE OF GOODS**, col. 377.

—Lessee—Termination of lease.

See **LANDLORD AND TENANT**, col. 247.

—Licence—Intention to oppose renewal.

See **LICENSING ACTS**, col. 252.

—Marriage—False statements in.

See **DIVORCE**, col. 146.

—Meeting—Company.

See **COMPANY**, col. 91, and **COSTS**, col. 118.

—Nuisance—Abatement.

See **PUBLIC HEALTH**, col. 336.

—Party wall.

See **LONDON**, col. 266.

—Repair—Covenant—Breach.

See **LANDLORD AND TENANT**, col. 217.

—Statutory defence—County court.

See **COUNTY COURT**, col. 120.

—Trustees of mortgaged property.

See **MORTGAGE**, col. 282.

—Underwriters—Reasonable time.

See **INSURANCE (MARINE)**, col. 207.

—Valuation list—Sent by post but not received.

See **RATES**, col. 345.

NOTICE TO TREAT—Easement.

See **COMPENSATION**, col. 191.

NOVA SCOTIA.

See **CANADA**, col. 73.

NUISANCE—Common—Indictment—Canada.

See **CANADA**, col. 71.

Landlord and tenant—Overhanging trees—Dangerous to cattle at date of lease—Lessor's duty to lessee.

Appeal from the judgment of a Div. Ct. on appeal from the county court of Gloucestershire holden at Cirencester ([1917] 2 K. B. 516).

The plt. was tenant to the deft. of a farm held upon a yearly tenancy from Sept., 1914. One of the fields of the farm adjoined land in the occupation of the deft., and was separated

NUISANCE—continued.

from it by a fence. On the deft.'s land, about 3 feet from the fence, was a scrubbery of box, laurel, and yew trees. On Jan. 4, 1917, two of the yew trees overhung the fence to the extent of 3 feet. The plt. said that he did not know of the existence of the yew trees, or that they were dangerous for cattle. The plt.'s mare, in foal, was in the field, ate of the yew branches, and died. The C. A. assumed the fact to be that the yew trees overhung the land to the same extent and in the same condition both at the date of the commencement of the tenancy and at the date when the mare ate of the branches. The county court judge, upon the authority of *Erskine v. Adeane* (1873) L. It. 8 Ch. 756, 761, gave judgment for the deft. In the Div. Ct. the learned judges differed in opinion, and the appeal was therefore dismissed. The plt. appealed.

The C. A. held that it must be taken, in the absence of evidence by the plt. to the contrary, that the condition of the yew trees was substantially the same at the date of the commencement of the tenancy as in Jan., 1917, and that therefore the judgment of Mellish L.J. in *Erskine v. Adeane* applied, and the deft. was not liable. *CHEATER v. CATER* - C. A. [1917] W. N. 365; 34 T. L. R. 123; 62 S. J. 141

Local government—Sewage refuse—Offensive smells—Conflicting evidence—Injunction—Stay of injunction during the war.

A local authority used a field adjoining the plt.'s ry. station as a "tip" for the deposit of fecal refuse. A large number of witnesses for the plt. stated that the smells from the tip were offensive, and dangerous to health. An equal number of witnesses for the local authority swore that the smells were not serious nor detrimental to the public health, and that they had greatly diminished or ceased altogether since the tip had been covered by a layer of earth:—

Held, that where, as in *Bainbridge v. Chertsey U. D. C.*, 13 L. G. R. 935; 85 L. J. (Ch.) 626, a strong weight of reliable positive evidence is produced by the plt., such evidence cannot be set aside by reason of mere negative testimony on the part of the defts.

Held, further, that though the plt. were entitled to an injunction to restrain the using of the tip, yet, in view of the difficulties of the times and the scarcity of labour, the operation of the injunction must be stayed until six months after the termination of the war. *GREAT CENTRAL RY. v. DONCASTER R. D. C.*

Astbury J. 15 L. G. R. 813; 62 S. J. 212

Local government—Urinal, Erection of—Statutory powers to create nuisance—Mere proximity no nuisance—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 39.

Where a local authority under its statutory powers erected a urinal adjoining a dwelling-house, and it was possible from the windows of the house to see persons entering and leaving the urinal just at the entrance owing to openings in the roof and back wall of the building:—

Held, that a local authority has no statutory authority to create a nuisance; that mere proximity does not constitute a nuisance, but

NUISANCE—*continued*.

that one in fact must be made out in order to obtain an injunction; and that the openings in the urinal did constitute a legal nuisance to the owner and occupier of the dwelling-house.

Biddulph v. St. George, Hanover Square, Vestry (1863) 3 D. J. & S. 493; *Peckick v. Plymouth Corporation* (1894) 70 L. T. 304; and *Mason v. Wallace Local Board* (1876) 53 J. P. 477. n., followed. *MUDGE v. FENGE U. D. C.* *Asbury J.* 86 L. J. (Ch.) 128; 15 L. G. R. 33; 115 L. T. 679

— Notice to abate—Notice to owner.
See PUBLIC HEALTH, col. 336.

Sewer — Sewerage — Stream — Unreasonable and negligent exercise of statutory power.

The plt. was owner and occupier of pasture and meadow lands, which adjoined S. street, in the outskirts of the town of D. A stream passed under S. street into plt.'s lands, and was the watering-place for his cattle. Deft. was the owner of some old houses in S. street. They had no w.c. accommodation; but the surface water from their yards was carried into a surface-water roadside drain which flowed into the stream before it entered plt.'s lands. This drain was held to be a "sewer" within the meaning of the Public Health Acts, but it was admitted that it was unfit for carrying faecal sewage, and that it would be insanitary and improper to use it for that purpose. The deft. built on the site of the old houses four new houses with w.c. accommodation. The deft. was a member of the local sanitary committee which was appointed to advise the sanitary authority upon sanitary questions. In that capacity he joined in advising the sanitary authority that there was no "main sewer in S. street," and that it was absolutely necessary to construct a new sewer for the drainage of deft.'s house. The sanitary authority invited tenders for a new sewer, but did not proceed with the work. The deft. did not resort to his statutory remedy of complaint to the Local Government Board, but proceeded to connect his new w.c.'s with the surface-water sewer, and to let his houses to tenants. The necessary and obvious result of his doing so was that the faecal sewage, within four minutes of leaving his premises, passed through the surface-water sewer into the plt.'s stream and pasture lands, and caused a serious and injurious nuisance. The deft. claimed an absolute right to cause his house drains to empty into any sewer of the sanitary authority regardless of the consequences to third parties:—

Held, that the deft. had exercised his statutory right of causing his drains to empty into the sewer of the sanitary authority in an unreasonable and negligent manner, and without having reasonable regard to the rights of third parties; and that he should be restrained by injunction from discharging faecal sewage into the surface-water sewer so as to cause it to flow or pass into plt.'s land, and so as to pollute plt.'s stream. *WALLACE v. M'CARTAN — Barton J.* (Ir.) [1917] 1 I. R. 377

See LOCAL GOVERNMENT, col. 260.

OATH—Affirmation—Military service—Attestation.

See ARMY, col. 39.

— Statement on.

See CRIMINAL LAW, col. 132.

OBJECTS—Company—Legality.

See COMPANY, col. 92.

OBSTRUCTION—Highway.

See HIGHWAY, col. 191.

OCCUPIERS — Adjoining farms — Fence out of repair.

See TRESPASS, col. 442.

— Land — Highway — Obstruction — Tree

fallen across highway—Liability.

See HIGHWAY, col. 191.

OFFICIAL ASSIGNEE—Stock Exchange.

See BANKRUPTCY, col. 59.

OFFICIAL RECEIVER—Bankruptcy.

See BANKRUPTCY.

OFFICIAL REFEREE—Reference by judge to — Trial.

See HUSBAND AND WIFE, col. 195.

ONTARIO.

See CANADA, col. 74, and *INSURANCE (ACCIDENT)*, col. 201.

OPEN CONTRACT—Purchase of land.

See VENDOR AND PURCHASER, col. 451.

OPTION — Tenant — Purchase of reversion —

Lease—Notice to exercise option.

See CONVERSION, col. 115.

OPUS MANUFACTUM — Erection of, in bed of stream.

See WATER, col. 454.

ORDER—Bankruptcy.

See BANKRUPTCY, col. 62.

— Taxation.

See SOLICITOR, col. 421.

ORDER IN COUNCIL.

See EMERGENCY LEGISLATION, col. 161, and *PRIZE COURT*, col. 317.

ORDINARILY RESIDENT IN GREAT BRITAIN.

See ARMY, col. 43.

"ORIGINAL LITERARY WORK."

See COPYRIGHT, col. 116.

ORIGINATING SUMMONS — Husband and wife—Disputes as to property.

See HUSBAND AND WIFE, col. 195.

OUTBREAK OF WAR—Effect of—Insurance.

See ALIEN ENEMY, col. 13, and *PRIZE COURT*, col. 325.

OVERCROWDING — Street railway—Endangering public property and comfort—Contractual duty—"Criminal case."

See CANADA, col. 71.

OVERHANGING TREES—Landlord and tenant

—Lessor's duty to lessee.

See **NUISANCE**, col. 291.**OWNER**—Housing—Demolition order—Subsequent application for postponement—Undertaking to repair.See **LOCAL GOVERNMENT**, col. 261.

— Nuisance—Notice to abate.

See **PUBLIC HEALTH**, col. 336.

— Street—Making up—Apportionment of expenses—Failure to make objections.

See **LOCAL GOVERNMENT**, col. 263.

— Surface.

See **MINES**, col. 278.**"OWNER OF PRIOR ESTATE."**See **TAIL, TENANT IN**, col. 429.**OWNER'S RISK**—Railway—Carriage of goods.See **RAILWAY**, col. 339.**PARCELS POST**—Goods sent by—Seizure.See **PRIZE COURT**, col. 328.**PARISH QUOTA**—Land tax.See **REVENUE**, col. 361.**PARISHES**—Alteration—Settlement.See **POOR LAW**, col. 306.

PARLIAMENT — *Disqualification — Government contract—Order to insert advertisement in newspaper—House of Commons (Disqualification) Act, 1782 (22 Geo. 3, c. 45)—House of Commons (Disqualification) Act, 1801 (41 Geo. 3, c. 52).*

A simple order to insert a Government advertisement in a particular issue of a newspaper is not a contract or agreement within the House of Commons (Disqualification) Acts, 1782 and 1801, and s. 2 of the former Act does not apply to contracts which have already been executed at the time of sitting and voting in the House. **TRANTON v. ASTOR**

Low J. 33 T. L. R. 383

PARLIAMENT AND LOCAL ELECTIONS ACT, 1917 (7 Geo. 5, c. 13).**PAROCHIAL ASSESSMENTS ACT, 1836.**See **RATES**, col. 343.**PAROL AGREEMENT**—Lease.See **SPECIFIC PERFORMANCE**, col. 425.**PAROL REPRESENTATION**—Credit.See **BANK**, col. 55.**PART PERFORMANCE.**See **SPECIFIC PERFORMANCE**, col. 425.**PARTIAL INCAPACITY**—Compensation.See **WORKMEN'S COMPENSATION**, col. 501.

PARTICULARS — *Discovery—Traverse of plaintiff's negative allegations—Onus on plaintiff—Particulars of traverse—Practice—R. S. C., 1883, O. XIX., r. 7. WEINBERGER v. INGLIS*

Astbury J. [1917] W. N. 355

PARTICULARS—*continued.*

Probate practice—Suit to establish will in solemn form—Earlier wills propounded alternatively by reply—Fraud—Particulars.

In an action brought by the executors to establish a will in solemn form of law, the deft., a next of kin of the deceased, pleaded (inter alia) fraud on the part of the residuary legatee, and gave certain particulars.

On the application of the plts., the deft. was ordered to give the best particulars he could of the times when, the places where, and the names and addresses of the persons in respect of whom certain misrepresentations and false and malicious statements by the residuary legatee were alleged to have been made, and the names of the persons who were said to have been refused admittance to the deceased's house, with liberty to the deft. up to fourteen days before the trial (but not later without leave) to furnish such further particulars as he might be advised. **HARLEY v. RUSSELL** - [1917] 2 I. R. 103

PARTIES — *Mortgage suit—Plaintiffs paid the amount of their demand—Death of defendant—Application ex parte by puisne incumbrancer to have proceedings continued—R. S. C. (Ir.), O. XVI., rr. 2, 4; O. XXXI., rr. 7, 8.*

In a mortgage suit an order for the sale of certain lands of the mortgagor was made, and out of the proceeds the plts. were paid in full. The deft. having died, a puisne incumbrancer, who had not been paid in full, applied ex parte to have the proceedings continued by the original plt. against the personal representative of the deft. —

Held, that the proper application was for an order to continue proceedings in the name of the applicant as plt. against the personal representative of the deft., and that the application should be by summons. **MUNSTER AND LEINSTER BANK v. MACKAY**

O'Connor M.R. (Ir.) [1917] 1 I. R. 49

Two defendants—Default judgment against one—Whether a bar to judgment against the other—Practice.

The plts. sued two defts., an individual and a co., for fraudulent representation whereby the plts. were induced to pay money to the co., and they made an alternative claim against the co. for rescission of the contract and return of the money. The co. made default in delivering a defence and the plts. obtained judgment against the co. for rescission and repayment of the money. The action against the other deft. proceeded to trial, and the jury awarded the plts. damages:—

Held, that the default judgment obtained against the co. for rescission and repayment did not operate as a bar to the cause of action against the other deft. for fraud. **CH. GOLDREI FOUCAR & SON v. LOUIS SINCLAIR AND THE RUSSIAN CHAMBER OF COMMERCE IN LONDON**

C. A. 34 T. L. R. 74

PARTITION—Exception of mines and minerals—Power to enter for the working of the minerals.

See **MINES**, col. 278.

PARTNERSHIP—Firm in neutral country.

See PRIZE COURT, col. 322.

— Limitations, Statutes of—Land.

See LIMITATIONS, STATUTES OF, col. 258.

PARTY CHARGEABLE.

See SOLICITOR, col. 421.

PARTY WALL NOTICE—London.

See LONDON, col. 266.

PASSENGER—Arrest.

See MASTER AND SERVANT, col. 274.

PASSING OF PROPERTY—Sale of goods—

Appropriation to contract.

See SALE OF GOODS, col. 367.

— Time of war—Goods sent by parcels post.

See PRIZE COURT, col. 328.

PASSING-OFF—Trade name—Interdict—Two companies with similar names—Interdict sought against respondent company carrying on business under registered name without adding words to distinguish the respondent company from the complainer company—Interdict refused.

BAIRD & TATLOCK (LONDON), LD. v. BAIRD & TATLOCK, LD. - Ct. Sess. (Sc.) (Lord Cullen)
34 R. P. C. 85

PATENT.

Alien Enemy. See ALIEN ENEMY.

Extension, col. 297.

Infringement, col. 299.

Master and Servant, col. 300.

Revocation, col. 300.

Specification, col. 300.

Subject-matter, col. 301.

Threats Action, col. 303.

Alien Enemy.

— Petition for revocation—Patentee's application to amend patent by disclaimer.
See ALIEN ENEMY, col. 16.

Extension.

Merit—Inadequate remuneration — War stopping trade—"Exceptional cases" under s. 18, sub-s. 5, of Patents and Designs Act, 1907 (7 Edw. 7, c. 29)—Seven years' extension granted.

A patent No. 5939 of 1903 was granted to I. for "improvements in and relating to fire-tube steam boilers of the marine or like type." A petition for extension of the term of the patent was presented by the I. B. Syndicate, Ltd. and I. The patent embodied a new arrangement of old ideas which was of real value to the public. The patentees had incurred a loss of 800l. due mainly to the expense of making and testing an experimental boiler, and of trial installations. As the result of these experiments, but only after much time had been spent thereon, the merits of the boiler were recognized by the public, and a substantial demand therefor arose shortly before the outbreak of war in Aug., 1914. Owing to difficulties created by the war, the trade in the patented boilers ceased:—

PATENT (Extension)—continued.

Held, that there were merit and inadequacy of remuneration; but that the present was not one of the exceptional cases referred to in s. 18, sub-s. 5, of the Patents and Designs Act, 1907, in which the term of the patent might be extended for fourteen years. Seven years' extension was granted. *In re INGLIS'S PATENT* Ct. Sess. (Sc.) (Lord Dewar, 34 R. P. C. 157

Merit — Novelty — Remuneration of petitioners held inadequate—Extension for three years granted—Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 18.

In 1902 a patent was granted for "improvements in the treatment or complete purification of brine or other saline solutions." The improvements consisted in adding a chemically equivalent quantity of freshly-precipitated barium carbonate to precipitate the calcium and magnesium sulphates (with or without the previous addition of lime to convert the magnesium sulphate into calcium sulphate), or, if calcium chloride or magnesium chloride, or both, were present, first adding a soluble sulphate, such as sodium sulphate, to convert the chlorides into sulphates, and then treating as before. A petition for the extension of the patent was presented by the patentee and a co. formed to work his process, and it was proved that, by the patented process, salt containing at least 99.98 per cent. of sodium chloride could be produced with great rapidity and economy, a result never before obtained on a commercial scale:—

Held, that prior to the patent chemists had not been able to turn the well-known chemical facts to practical account in the way of producing a chemically pure salt; that the petitioners had developed a process that was of great importance to the public; that the petitioners had not been adequately remunerated; and that a new patent for three years ought to be granted. *In re TRANTOM'S PATENT* Sargent J. 34 R. P. C. 28

Merit—Remuneration of inventor inadequate —Extension granted for seven years, not to exceed five years from termination of war.

In 1902 a patent was granted for "improvements in or relating to means or apparatus for operating or controlling typewriting and type-setting mechanism by means of perforated tape." The object of the invention was to reproduce telegraphic messages in ordinary printed letters. At the hearing of a petition for the extension of the patent there was no opposition by the public, and it was admitted on behalf of the Comptroller-General that the invention was meritorious. The number of users was necessarily small, and the working of the invention had, for about a year, been impeded by the existing war, but the petitioners, including the inventor, had received considerable remuneration:—

Held, that the remuneration was inadequate. An extension was granted for seven years, not to exceed five years from the termination of the war. *In re CREED'S AND COULSON'S PATENT* - - - Sargent J. 34 R. P. C. 11

PATENT (Extension)—*continued.*

Petition for—*Comptroller-General held to have power to extend the time for presenting a petition*—*Patents and Designs Act, 1907 (7 Edw. 7, c. 29), ss. 18 and 36—Patents, Designs and Trade Marks (Temporary Rules) Act, 1914 (4 & 5 Geo. 5, c. 27), s. 1—Rule 3 made thereunder.*

Under s. 1 of the Patents, Designs and Trade Marks (Temporary Rules) Act, 1914, c. 27, and r. 3 made thereunder, the Comptroller-General has power to extend the time for the presentation of a petition for extension of the term of a patent prescribed by s. 18 (i). *In re WOODALL & DUCKHAM'S PATENT* - Sargent J. 34 R. P. C. 228; 117 L. T. 216; [1917] W. N. 164; 61 S. J. 479

Infringement.

Action for—*Action settled.* W. & T. AVERY, L.D. v. ASHWORTH, SON & CO.

Eve J. 34 R. P. C. 216

Action for—*Defence and particulars delivered, but defendants not appearing at trial—Judgment for plaintiffs—Certificate of validity having come in question granted*—*Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 35.*

In 1913 a patent was granted for "improvements in incandescent electric lamps." In an action for infringement of the patent the defendants denied infringement, and alleged (inter alia) anticipation by prior specifications, and want of subject-matter by reason of the prior specifications and common knowledge. They made certain admissions with respect to the alleged infringement. At the trial they did not appear. The plts. adduced evidence as to infringement and as to validity.

Judgment was given for the plts. with costs. A certificate of validity having come in question was given, with an inquiry as to damages and delivery up. *BRITISH THOMSON-HOUSTON CO. v. A. & A. ELECTRICAL CO.* - Sargent J. 34 R. P. C. 42

Action for—*Defence of invalidity of patent—Counter-claim for revocation of patent—Action discontinued—No defence to counter-claim—Order made for revocation of the patent with costs*—*Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 32.* *COVENTRY RADIATOR CO. v. COVENTRY MOTOR FITTINGS CO.* - Eve J. 34 R. P. C. 239

Action in New Zealand for infringement—Patent held invalid by the Supreme Court of New Zealand—Appeal to His Majesty in Council dismissed.

A patent was in 1903 granted in New Zealand to G. for "an improvement in pneumatic milking apparatus."

An action for infringement was commenced in New Zealand by G. against a co. The Supreme Court of New Zealand dismissed the action, holding the patent invalid. G. appealed to His Majesty in Council:—

Held, by the Judicial Committee of the Privy Council, that G.'s alleged invention was simply the application to a milking apparatus of a well-known physical law accomplished by the oldest and simplest method; and that was not subject-matter for a patent. The appeal was dismissed with costs. *GILLIES v. GANE MILKING MACHINE CO.* - J. C. 34 R. P. C. 21

PATENT (Infringement)—*continued.*

Action settled at the trial on agreed terms—Injunction awarded but not to be enforced if a licence was granted to the defendant—Certificate of validity applied for, but application withdrawn.

SOUL & HOWE v. DARCH - Peterson J. 34 R. P. C. 366

Judgment for plaintiff in default of appearance—Order for judgment discharged under special circumstances, and defendants allowed to enter an appearance and defend the action on certain terms.

BETTS v. SHEPHEARD & CO. - Eve J. 34 R. P. C. 367

Two patents—One patent held not to have been infringed—The other patent held invalid—Action dismissed—Appeal to C. A.—Further evidence admitted—Appeal allowed as to first patent and dismissed as to second patent—Costs—Appeal to H. L. as to first patent—Application by respondents for leave to give further evidence refused—Appeal allowed.

LENCH (THOMAS WILLIAM), L.D. v. FELLOWS H. L. (E.) 34 R. P. C. 45

Master and Servant.

Assistant engineer—Invention patented by servant—Servant trustee for master.

An assistant engineer to the plt. co., whose duty it was to design the best method of carrying out certain work of the co., discovered in the course of his employment a method by which his employers could more effectively carry out the work. For this invention he obtained a patent, and claimed to retain the benefit of it for his own use:—

Held, that the terms of his particular employment imposed upon him an obligation to produce the best design he could, and that he was a trustee of the patent for the plt. co. *BRITISH REINFORCED CONCRETE ENGINEERING CO. v. LIND* - Eve J. 34 R. P. C. 486; 34 R. P. C. 101, 272; 116 L. T. 243; [1917] W. N. 38; 33 T. L. R. 170

Revocation.

Action for infringement—Defence—Particulars of objections—Prior publication—Counter-claim for revocation of patent—Dismissal of action, the plaintiff offering no evidence on it—Order for revocation of patent with costs.

NAPIER v. PALLADIUM AUTOCARS, LD. Sargent J. 34 R. P. C. 43

Specification.

Amendment—Revocation, Application for—Improvements in ski-cycles—Application for revocation refused, but specification ordered to be amended—Appeal by applicant to the Court dismissed—Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 26.

On an application to the Comptroller-General to revoke a patent No. 3022 of 1915 for improvements in ski-cycles or scooters, the applicant relied on a patent of his No. 19,113 of 1914, and also on another patent of his No. 17,727 of 1910. The Chief Examiner, acting for the Comptroller-General, held, that the particular construction to which the patentees were limited had not been patented by the applicant, that

PATENT (Specification)—continued.

the invention of the applicant was not part of public knowledge at the date of the patent, nor was his patent a pioneer patent embodying a new and important principle. He refused to revoke the patent but directed an amendment of the specification. On appeal from this decision to the Court, *held*, that it could not be said that there were not such differences in the arrangement of the patentees' mechanism and the arrangement of the applicant's mechanism as would not form a defence in an infringement action by the applicant against the patentees, and the appeal failed and must be dismissed with costs. *In re BEST AND MARSHALL'S PATENT* Sargant J. 34 R. P. G. 205

Subject-matter.

Action for infringement of two patents—Trial of issue of infringement postponed, by consent, until validity decided—One patent held invalid for want of subject-matter—Other patent held invalid by reason of prior user—Action dismissed—Appeal to C. A. as to first patent dismissed.

In 1906 a patent was granted for a "process and apparatus for the treatment of metallic tungsten and for the manufacture of electric lamp filaments therefrom." The first claim was as follows:—"The method of working tungsten, which consists in subjecting the metal in a coherent form to the action of heat while it is being operated on or manipulated." In 1911 a patent was granted for "improvements in methods of wire drawing." The first claim was as follows: "In wire drawing, the method of lubricating the wire which consists in providing it with an adherent coating of graphite." In an action for the infringement of the patents, the defts. alleged (inter alia) that the processes described in the specification had been carried on mainly outside the United Kingdom. On a summons for inspection of the defts.' process, it was, by consent, ordered that the trial of the issue of infringement should stand over until the issue of validity had been decided. At the trial, as to the 1906 patent, it was proved that, prior to the patent, tungsten filaments had been made from the powdered metal by a building-up process, but that, in 1896, M. had published an account of experiments showing that tungsten was malleable when hot; it was also proved that by means of M.'s process, coherent metallic tungsten, such as was described by the patentees, could be obtained. As to the 1911 patent, it was proved (inter alia) that in 1905-6, wire had been coated with graphite, baked and drawn, and then sold; that there had been no secrecy about the process, and that it had been discontinued solely on the ground of expense. The defts. undertook that, if judgment as to validity was in their favour, they would not proceed with their plea of manufacture abroad:—

Held, that, as to the 1906 patent, the first claim was a wide claim for working pure coherent tungsten when hot; and that, in view of M.'s disclosures, and the common practice of metallurgists, the patent was invalid for want of subject-matter; and that, as to the 1911 patent, there had been a prior user of the

PATENT (Subject-matter)—continued.

patented process, and the patent was therefore invalid. The action was dismissed with costs, a certificate was granted as to certain of the particulars of objections, and an undertaking was given by the defts.' solicitors as to the costs (33 T. L. R. 136). The plts. appealed to the C. A. as to the 1906 patent:—

Held, that the specification of the patent, construed as it ought to be construed, neither described nor claimed an invention which could be the subject of a patent. The appeal was dismissed with costs. *BRITISH THOMSON-HOUSTON CO. v. DURAM, LD.* - - - C. A. 34 B. F. C. 117; 33 T. L. R. 274

Patent held valid and infringed.

In 1904 a patent was granted for "Improvements relating to the manufacture of incandescent electric lamps." The improvements consisted in making filaments of pure tungsten by mixing finely-divided tungsten, or its compounds, with an organic binding material, forming the filaments from the mixture in the usual manner, and then carbonizing them, in some cases after denitration had been effected. The filaments were then raised to a high temperature by passing an electric current through them in an atmosphere of steam and hydrogen, and were rendered uniform, or equalized, by submitting them to the action of the current in an atmosphere of volatile tungsten compounds in the presence of a large quantity of hydrogen. At the trial of an action for infringement of the patent (and of a later patent, which the plts. did not rely upon at the trial) the defts. contended that they did not infringe, inasmuch as they did not carbonize the filaments, and did not pass an electric current through them, but heated them in an electrically-heated furnace; and that they did not use an atmosphere of steam and hydrogen for the removal of the carbon from the filaments, and did not equalize the filaments. The plts. contended that the purpose of passing the current through the filaments was only to raise them to a high temperature, and that the defts.' heating process was equivalent to the plts.'; that the defts. produced steam by the reaction taking place inside the tubes in which the filaments were heated, and so, in effect, used an atmosphere of steam and hydrogen. The defts. contended that the patent was invalid for want of subject-matter and utility, and for insufficiency of directions in the specification; that the idea of making filaments of tungsten was old; and that the only evidence that it was possible to carry out successfully the directions was not to be accepted. At the trial it was held that the patent was not for making filaments of tungsten, but only for making them by the particular process specified; that the defts. did not use an atmosphere of steam and hydrogen, in the sense in which the term was used in the specification; that the defts. had not infringed; and that, if it had been necessary to decide the question of validity, it was doubtful if the subject-matter and the directions were sufficient. A certificate as to the particulars of objections was given. The plts. appealed to the C. A. The question of infringement was

PATENT (Subject-matter)—continued.

alone argued. It was held that the defts.' process for producing filaments of pure tungsten was substantially different from the process described in the specification, and that the defts. had not infringed. The appeal was dismissed with costs. The plts. appealed to the H. L.

Held (Viscount Haldane and Lord Parmoor dissenting), that the patent was valid and had been infringed. The appeal was allowed with costs. **OSRAM-ROBERTSON LAMP WORKS, LD. v. POPE'S ELECTRIC LAMP CO.** - **H. L. (E.)**

34 R. F. C. 369; 34 T. L. R. 24

Threats Action.

Motion for interlocutory injunction—Adversitism—Whether general warning only—Adversitism held to be a threat directed against the plaintiffs—Interlocutory injunction granted.

H. Bros. & Co., who sold a wrist watch protector of a special design under the name "Mesh-Guard," issued an advertisement, in which they referred to registration of a design and to provisional protection under a patent, and referred to "some rubbishy imitations," and the adoption of "similar sounding names," and threatened legal proceedings against manufacturers or dealers "infringing our patent or registered design." B. & H. shortly before this advertisement had commenced to advertise their "Vizard" protectors, which differed only in the shape of the ears from the "Mesh-Guard." B. & H. commenced an action for threats against H. Bros. & Co., and moved for an interlocutory injunction. H. Bros. & Co. were not proprietors of the patent or design, but were licensees thereunder. It appeared that there was another protector on the market called the "Vanguard," but it was not so near in appearance to the "Mesh-Guard" as the "Vizard" was:—

Held, that the advertisement was not a general warning, and that, whether it was directed against the "Vanguard" or not, it was directed against the "Vizard." An interlocutory injunction was granted. **BONEHAM AND HART (TRADING AS F. BONEHAM & CO.) v. HIRST BROS. & CO.** - **Peterson J.**

34 R. P. C. 209

PAYMENT—Condition as to—Sale of goods.

See SALE OF GOODS, col. 377.

— Debentures—Interest.

See COMPANY, col. 88.

— Debts due from enemy—Interest—German ordinance prohibiting payment of interest.

See ALIEN ENEMY, col. 13.

— Income—Mortgaged property.

See MORTGAGE, col. 282.

Remittance by post—Implied request.

The plt. borrowed from the deft. society on the security of a mortgage 400l. repayable by instalments. Shortly before the first instalment was due the defts. sent to the plt. a notice asking him to pay the amount, which was 48l., inclusive of interest, and to "return this notice when

PAYMENT—continued.

remitting." The plt. sent the amount in Treasury notes and cash in a registered postal packet, which was delivered to the lift-boy in the building where the defts.' office was. The lift-boy stole the money. In an action for a declaration that the plt. had paid the money to the defts. it appeared that after the loss a marginal note was put on some of the defts.' note-paper stating that cash and Treasury notes should be sent by registered post:—

Held, that though the request to "return this notice when remitting" implied a willingness on the part of the defts. to receive the money through the post office, yet it was only a request that when the sum was such that it was usual to send it through the post it might be sent by registered post, and as the fact that the usual way to send so large a sum as 48l. was by crossed cheque was not displaced by the marginal note, the ordinary rule that a debtor must seek his creditor applied, and the action failed. **MITCHELL-HENRY v. NORWICH UNION LIFE INSURANCE SOCIETY, LD.**

Bailhache J. [1917] W. N. 346; 34 T. L. R. 77

PENALTY CLAUSE—Charterparty—Limitation of liability.

See SHIPPING, col. 394.

PENSION.

See WORKMEN'S COMPENSATION, col. 505

PERFORMANCE—Impossibility of.

See CONTRACT, col. 108.

PERILS OF THE SEA.

See INSURANCE (MARINE).

PERPETUAL ANNUITY.

See ANNUITY, col. 21.

"PERSON"—Corporation.

See CRIMINAL LAW, col. 127.

PERSONAL ESTATE—Vested interest in—

Conversion—Forfeiture—Felony.

See FORFEITURE, col. 181.

PERSONALTY—Assignment of interest in.

See MORTGAGE, col. 282.

— Conversion.

See CONVERSION, col. 115.

PETITION—Bankruptcy—Receiving order.

See BANKRUPTCY, col. 62.

— Judgment creditor—Appeal.

See COMPANY (WINDING UP), col. 98.

PETITION OF RIGHT — Trial — Right of suppliant to a jury—Claim for damages for breach of contract—Petitions of Right Act, 1860 (23 & 24 Vict. c. 34), s. 7.

Under s. 7 of the Petitions of Right Act, 1860, the Court has a discretion as to whether the trial of a petition of right is to be by a judge or by a judge and jury. **MARCONI'S WIRELESS TELEGRAPH CO. v. REX** - **G. A.**

[1917] W. N. 364; 34 T. L. R. 115; 62 S. J. 103

PETITIONING CREDITOR—Debt.

See **BANKRUPTCY**, col. 61.

PHOTOGRAPHS—Sole right of taking.

See **ACTION, CAUSE OF**, col. 2.

PILOT AND PILOTAGE.

See **SHIPPING**, col. 410.

PLACE OF ASSESSMENT—Income tax—

Foreign possessions.

See **REVENUE**, col. 358.

PLACE OF PAYMENT—Debentures.

See **COMPANY**, col. 88.

PLACE OF RESIDENCE—Income tax—

Foreign possessions.

See **REVENUE**, col. 358.

PLANS—Railway—Approval—Exemption from taxation—Condition.

See **CANADA**, col. 70.

—Railway—Special Act—Incorporation.

See **COMPENSATION**, col. 102.

PLANT—Reservoir—Construction—Minister of Munitions—Order for sale.

See **CONTRACT**, col. 108.

PLEA—King's Proctor—Answer to.

See **DIVORCE**, col. 146.

PLEADING—Judicial Trustees Act, 1896—

Not necessary to plead the Act as a defence.

See **MORTGAGE**, col. 282.

PLURALITIES ACTS.

See **ECCLESIASTICAL LAW**, col. 151.

POLICE—Special constable—Dismissal by chief constable—Whether action for wrongful dismissal will lie—*Special Constables Act, 1914* (4 & 5 Geo. 5, c. 61), s. 1, sub-s. 1—*Special Constables Order, 1914*, s. 6.

The effect of s. 6 of the Special Constables Order, 1914, made under s. 1, sub-s. 1, of the Special Constables Act, 1914, is that no action will lie against a chief constable for alleged wrongful dismissal of a special constable.

PORTER v. KERSLAKE - - - Bray J
 • 84 T. L. R. 77

POLICE DIARIES—Criminal law—Practice of Judicial Committee (Privy Council).

See **JUDICIAL COMMITTEE**, col. 233.

POLICY—Insurance.

See **INSURANCE**.

POLITICAL REFUGEE—Alien—Deportation.

See **ALIEN**, col. 9.

POOR LAW—Maintenance and control of child—Resolution by guardians—Assisting child to leave place where child under control—Necessity of proving grounds for passing resolution—*Poor Law Act, 1899* (62 & 63 Vict. c. 37), ss. 1, 2.

In respect of two children who were being maintained by them, the guardians of a poor law union passed a resolution in the following terms: "That in pursuance of the authority

POOR LAW—*continued.*

vested in the guardians by the Poor Law Act, 1899, s. 1, the undermentioned children chargeable to this union be placed under the control of the guardians of the Eastbourne Union until the said children shall reach the age of eighteen years." In proceedings against a person under s. 2 of the Act for the offence of knowingly assisting one of the said children to leave, without the guardians' consent, the place where the child was under that control:—

Held, that it was not necessary for the prosecution to prove, in addition to the resolution itself, that one or other of the grounds mentioned in s. 1, sub-s. 1, of the Act existed which justified the guardians in passing the resolution. *HURST v. NOWLAN* - - - Div. Ct.

[1917] 2 K. B. 863; 15 L. G. R. 855;

[1917] W. N. 304; 82 J. P. 7

Settlement—Alteration of parishes—Gloucester Extension Order, 1900, art. xxxi.—Local Government Board's Provisional Orders Confirmation (No. 14) Act, 1900 (63 & 64 Vict. c. clxxxiii.).

By a Provisional Order, duly confirmed by statute, part of the parish of Upton St. Leonard's was added to the parish of Gloucester. Art. xxxi. of the Order provided, inter alia, that "for all purposes of settlement and removal residence prior to the commencement of this Order in any area added by this Order to the parish of Gloucester . . . shall be deemed to have been residence in the parish" of Gloucester:—

Held, that this provision applied only to those persons who at the commencement of the Order were in course of acquiring a settlement, so as to preserve their inchoate rights, and that it did not have the retrospective effect of creating or conferring a settlement where none existed at the commencement of the Order.

A person during the years 1893–97 resided in the parish of Gloucester and in that part of the parish of Upton St. Leonard's which by the Order was added to the parish of Gloucester for consecutive periods of less than three years in each of those parishes but together constituting an aggregate period of consecutive residence of more than three years. Prior to the date of the Order he had not acquired a settlement in Gloucester:—

Held, that art. xxxi. had not the effect of conferring upon him a settlement in Gloucester.

Gloucester Union v. Woolwich Union

Div. Ct. [1917] 2 K. B. 374; 26 L. J. (K. B.)

1187; 15 L. G. R. 561; 117 L. T. 250;

[1917] W. N. 194; 81 J. P. 281

Settlement—Three years' residence—Irremovability—Child under sixteen—Poor Removal Act, 1846 (9 & 10 Vict. c. 66), ss. 1, 3—*Divided Parishes and Poor Law Amendment Act, 1876* (39 & 40 Vict. c. 61), s. 34.

Under s. 1 of the Poor Removal Act, 1846, as amended, no person shall be removed from any parish in which such person shall have resided for one year next before the application for the warrant of removal, provided that the time during which such person shall be confined as a patient in a hospital shall be excluded in the computation of time. By s. 3 no child under sixteen residing in a parish with his father shall

POOR LAW—*continued.*

be removed from the parish in any case where the father may not lawfully be removed from the parish.

By s. 34 of the Divided Parishes and Poor Law Amendment Act, 1876, "Where any person shall have resided for the term of three years in any parish, in such manner and under such circumstances in each of such years, as would . . . render him irremovable, he shall be deemed to be settled therein."

A child under the age of sixteen resided with his father in a parish from Dec. 2, 1901, to Apr. 24, 1903, except that during the week Oct. 21 to Oct. 28, 1902, the father was confined as a patient in a hospital in another parish in the same union as that in which the parish was situated:—

Held, that the father, and therefore the child also, became irremovable from the parish on Dec. 9, 1902; that the three consecutive years' residence required by s. 34 of the Act of 1876, in the case of the child, included the year ending Dec. 9, 1902; and that the child had therefore acquired a settlement in the parish, notwithstanding that the father by reason of the continuity of his residence having been broken by his confinement in hospital had not done so.

DAVENTRY UNION v. COVENTRY UNION
Div. Ct. [1917] 1 K. B. 289; 86 L. J. (K. B.) 276; 15 L. G. R. 52; 116 L. T. 266;
[1916] W. N. 430; 31 J. P. 62

POOR RATE.

See RATES.

POSSESSION.—Buyer in.—Sale of goods.—
Agreement to buy.—Conditional agreement.—Sale to third person.

See SALE OF GOODS, col. 366.

POST.—Letter mail.—Seizure.

See PRIZE COURT, col. 324.

--- Notice sent by.

See RATES, col. 345.

--- Parcels.—Seizure.

See PRIZE COURT, col. 328.

POST-BELLUM SHIPMENTS.

See PRIZE COURT.

POTENTIAL VALUE Compensation.

See COMPENSATION, col. 102.

POWER OF APPOINTMENT.

Execution, col. 307.

Release, col. 309.

Satisfaction, col. 310.

Will. *See ANNUITY.*

Execution.

Settlement. *Special power of appointment.* *Will.* *General bequest of property upon trusts for objects of power.* *General reference to powers.* *Charge of debts.* *Power executed.* *Residence.* *Settlement at trustees entitled to retain trust funds.*

A married woman, having a power by deed or will to appoint settled trust funds in favour of her issue, made her will as follows: "I give devise and bequeath all my property of any

POWER OF APPOINTMENT (Execution) — continued.

description including any property over which I may have a power of appointment" unto trustees upon trust for sale and conversion, and thereout to pay her debts, and to hold the residue upon trusts for her daughter for life, with remainder to the daughter's children at twenty-one or marriage. The testatrix had no property of her own:—

Held, that the will executed the special power, the charge of debts being ineffectual.

Held, also, that the trustees of the will were not entitled to a transfer from the settlement trustees of the settled trust funds, but that the latter were entitled to retain and hold the same upon the trusts of the will.

Bask v. Aldam (1874) L. R. 19 Eq. 16 followed.

Held, also, the fact that the testatrix had no property was admissible as evidence of surrounding circumstances from which an intention to execute the power might be inferred. *In re MACKENZIE. THORNTON v. HUDDLESTON*

Neville J. [1917] 2 Ch. 58; 86 L. J. (Ch.) 543; 117 L. T. 114; [1917] W. N. 154

Special power.—Daughters of donee.—Appointment to issue of daughters.—Excessive execution.—Gift over to objects of power.

A gift absolute and completed in terms under a power of appointment to an object of the power is not cut down by a superadded direction or condition which is void as being an excessive execution, unless such direction or condition is not severable from the absolute gift. *In re OLIPHANT'S TRUSTS. In re DIXON'S WILL. PHILLIPS v. PHELPS* - Eve J. 86 L. J. (Ch.) 452; 116 L. T. 115

Special power to appoint by will.—Donee with Italian domicile.—Exercise by unattested Italian will.—Conflict of laws.—Wills Act, 1837 (1 Vict. c. 26), ss. 9, 10, 27.

By a marriage settlement of English personal property, made in 1855, the property was given to trustees "in trust for such of the children of the marriage as" (in the events that happened) W. should by will appoint. W. died in 1914 in Italy, having acquired an Italian domicile, and having by her will expressed the desire that the unmarried children "should have equal shares in the money which is left," naming the items of the settled property, "and any other property which I can have the power and the right to dispose of." The will was valid according to Italian law, but there were no attesting witnesses to it. Letters of administration with the will annexed were granted out of the Probate Division of the High Court in England:—

Held, that the will was a valid execution of the power.

The question (as stated by Stirling J. in *In re Price* [1900] 1 Ch. 442, 447) is whether the word "will" in the instrument creating such a power means any instrument recognized by the law of England as a will or a will executed in accordance with the law of England; and the former meaning is the right one, whether the power to appoint is general or special.

D'Huart v. Harkness (1865) 31 Beav. 324,

POWER OF APPOINTMENT (Execution)—
continued.

In re Price, supra, and *In re Simpson* [1916] 1 Ch. 562 followed.

The dictum to the contrary in *In re Kirwan's Trusts* (1883) 25 Ch. D. 373, followed in *Hummel v. Hummel* [1898] 1 Ch. 612, disapproved.

In re D'Este's Settlement Trusts [1903] 1 Ch. 598 and *In re Scholefield* [1905] 2 Ch. 408 distinguished. *In re WILKINSON'S SETTLEMENT*. *BUTLER v. WILKINSON - Sargant J.* [1917] 1 Ch. 620; 86 L. J. (Ch.) 511; 117 L. T. 81; [1917] W. N. 113; 33 T. L. R. 267; 61 S. J. 414

Release.

Children—Settlement—Marriage of only child—Separation deed—Donee of power party to deed for special purpose—Effect of recital—Release of power by implication.

E. T. under her father's will had a power of appointment by deed or will over one twelfth of his residuary estate in favour of her children and remoter issue, such issue to be born in her lifetime. The value of the twelfth share was about 17,000*l.* L. T., the son and only child of E. T., married in 1889 and had two children, both born in E. T.'s lifetime.

In 1900, by a separation deed made between L. T. of the first part, his wife of the second part, E. T. of the third part, and trustees of the fourth part, after reciting an agreement between the parties of the first three parts that L. T. and his wife should enter into a separation deed, to which E. T. should be a party and should enter into such covenant as thereafter contained, and that L. T. should make such settlement as thereafter contained, and that he was entitled to one twelfth of the residuary estate of his grandfather, subject to E. T.'s life interest therein, the parties of the first, second, and fourth parts entered into mutual covenants providing for the husband and wife living apart. E. T. separately covenanted to pay during her life to L. T. the sum of 300*l.* per annum, and then L. T., as settlor, assigned to the trustees the sum of 10,000*l.* to be raised out of the said share to which he was entitled in reversion as soon as it fell into possession, to be held on trusts (in the events which happened) for the benefit of his two children. In Feb., 1909, L. T. died, and by his will left his estate to charities. Subsequently E. T. by a deed poll appointed the twelfth share upon trusts for the benefit of L. T.'s two children and their respective issue to be born in her lifetime. E. T. died in 1915, and the question arose whether the separation deed had in any way affected her power of appointment:—

Held, varying the order of *Neville J.* [1917] 1 Ch. 511, that, having regard to the terms of the separation deed and the surrounding circumstances, the intention of the parties was that E. T. should release her power of appointment to the extent of 10,000*l.* only, and consequently that the deed poll operated as an effective appointment of the balance of the twelfth share in favour of L. T.'s two children and their respective issue. *In re SUGDEN'S TRUSTS*. *SUGDEN v. WALKER - C. A.* [1917] 2 Ch. 92; 86 L. J. (Ch.) 447; 117 L. T. 49; [1917] W. N. 144

POWER OF APPOINTMENT—continued.**Satisfaction.**

Appointment by deed or will among certain objects equally—Subsequent appointment by deed to one of the same objects “in full discharge” of share of appointor—Satisfaction pro tanto.

By his will, dated in 1893, a testator, in exercise of a power by deed or will to appoint a portions charge of 10,000*l.* among his younger children, appointed that the said sum should be paid in equal shares to all his daughters, of whom there were four. By deed, executed in 1896, on the marriage of one of his daughters reciting the said power, and that there were six children of his marriage, he irrevocably appointed that 2000*l.*, portion of the 10,000*l.*, should immediately belong to his said daughter, and he directed that the said sum of 2000*l.* should be “in full discharge” of the share of his said daughter in the 10,000*l.* He died in 1897, leaving his four daughters him surviving:—

Held, that the sum appointed by the deed of 1896 was in satisfaction pro tanto only, and accordingly that the married daughter became entitled under the will to 500*l.* in addition to the 2000*l.* so appointed to her by deed. *In re ALGER'S TRUSTS - Wylie J.* [1917] 1 I. R. 244

Will.

-- Perpetual annuity.

See ANNUITY, col. 21.

POWER OF ATTORNEY—Sale of land—Alien enemy.

See ALLEN ENEMY, col. 20.

POWER TO ENTER—Working of minerals.

See MINES, col. 278

POWERS—Settled land.

See SETTLED LAND, col. 384.

PRACTICE—Administration.

See ADMINISTRATION, col. 4.

-- Appeal—Benefices Act, 1898.

See ECCLESIASTICAL LAW, col. 151.

-- Appeal—Court of.

See APPEAL, col. 23.

-- Costs.

See COSTS, col. 118, and *SOLICITOR*, col. 420.

-- County court.

See COUNTY COURT, col. 121.

-- Divorce.

See DIVORCE, col. 144.

-- Husband and wife.

See HUSBAND AND WIFE, col. 193.

-- Parties.

See PARTIES, col. 296.

-- Prize Court.

See PRIZE COURT, col. 323.

-- Prohibition.

See REVENUE, col. 359.

PREMIUMS—Recovery of—Insurance.

See INSURANCE (LIFE), col. 202.

PREROGATIVE WRIT OF MANDAMUS —

Application for—Appeal—Time.

See *RATES*, col. 346.**PRESCRIPTION—Suspension.**See *EMERGENCY LEGISLATION*, col. 157.

— Title by—Sandhills.

See *SEWERS, COMMISSIONERS OF*, col. 390.**PRESUMPTION—Due execution—Lost will.**See *PROBATE*, col. 334.

— Knowledge and approval—Will.

See *PROBATE*, col. 334.

— Service—Notice.

See *RATES*, col. 345.**"PREVENTING OR HINDERING DELIVERY"**See *SALE OF GOODS*, col. 378.**PRE-WAR CONTRACT.**See *ALIEN ENEMY*.**PRICE—Rise—Sale of goods.**See *SALE OF GOODS*, col. 378.**PRINCES—Restraint of.**See *SHIPPING*, col. 407.**PRINCIPAL AND AGENT.***Agent acting for both Parties. See below.*
*Sale of Goods.**Bribe. See SOLICITOR.**Commission, col. 311.**Damages, col. 312.**Foreign Principal, col. 313.**Fraud, col. 314.**Lien, col. 314.**Sale of Goods, col. 314.***Agent acting for both Parties.**See below, *Sale of Goods*, col. 315.**Bribe.**See *SOLICITOR*, col. 423.**Commission.***Commission agent—Contract for indefinite period—Determination of contract—Notice—"Repeat" orders—Continuance of commission after determination of relationship—Measure of damages.*

The plt. in the course of travelling for his own business obtained orders for other traders on terms of commission. The deft. agreed with the plt. as follows: "I agree to pay you half profits on receipt of orders (provided the customer is good). Same applies to repeats on any accounts introduced by you." The deft. subsequently terminated the relation constituted by the agreement without giving any notice:—

Held, (1.) that there was no employment of the plt. by the deft. in the strict sense, and that the deft. was entitled to terminate their relations without notice.

Johnson v. Hunt & Son (1905) 93 L. T. 470 applied.

PRINCIPAL AND AGENT (Commission)—contd.

(2.) That, notwithstanding the termination of the relation, the plt. was entitled to commission on orders whenever received if they came from customers introduced by the plt.

Bilbee v. Husse & Co. (1889) 5 T. L. R. 677 (affirmed C. A. *Times* newspaper, Jan. 16, 1890) applied.

Morris v. Hunt & Co. (1896) 12 T. L. R. 187, *Barrett v. Gilmour & Co.* (1901) 6 Com. Cas. 72, and *Weave v. Brimsdown Lead Co.* (1910) 103 L. T. 429 commented upon and distinguished.

The measure of damages discussed. *Levy v. Goldhill - Peterson J.* [1917] 2 Ch. 297; 86 L. J. (Ch.) 693; 117 L. T. 442; [1917] W. N. 222; 33 T. L. R. 479; 61 S. J. 620

— Manager.

See *COMMISSION*, col. 83.

Traveller—Right to commission after agency determined—Contract—Illegality—Suspension—Dissolution.

The defts., a firm of drapers, appointed the plt. as their representative for the Midlands, North of England, and Scotland. He was to have "a commission of 7½ per cent. on the net amount of trade done on these grounds direct or indirect." All accounts opened by him on the above grounds were to be retained by him as long as he continued to represent the defts., but "should any alteration be made in representation on part of these grounds" the plt.'s consent in writing was to be obtained before relinquishing any particular accounts. The agreement was terminable by six months' notice on either side.

On Jul. 12 the plt. joined the Royal Flying Corps. Four days later he would have been compelled to join the forces by virtue of the Military Service Acts:—

Held, that the agreement was subject to the implied term that it should cease to be binding if future performance became unlawful, and that, performance having become unlawful by virtue of the Military Service Acts on Jul. 12 or four days later, the agreement was then finally determined and not merely suspended.

Tamplin Steamship Co. v. Anglo-Mexican Petroleum Products Co. [1916] 2 A. C. 397 and *Distington Hematite Iron Co. v. Posselt & Co.* [1916] 1 K. B. 811 followed.

Held, also, that the plt. was not entitled to commission upon trade done after the termination of his employment.

Bilbee v. Husse (1889) 5 T. L. R. 677 and *Wilson v. Harper* [1908] 2 Ch. 370 distinguished. *MARSHALL v. GLANVILLE - Div. Ct.* [1917] 2 K. B. 87; 86 L. J. (K. B.) 767; 116 L. T. 560; 33 T. L. R. 301

Damages.

Untrue statement negligently made by agent to principal—Loss suffered by principal.

Judgment of the Div. Ct. [1916] 2 K. B. 529 dismissing an appeal from a county court affirmed upon the ground that there was evidence upon which the county court judge could award the plt. the sum of 20% for her loss

PRINCIPAL AND AGENT (Damages)—*contd.*

of time. *JOHNSTON v. BRAHAM & CAMPBELL*,
 LD. - C. A. [1917] 1 K. B. 586; 86 L. J.
 (K. B.) 613; 116 L. T. 188; [1917]
 W. N. 20; 61 S. J. 233

Foreign Principal.***Liability of agent—Custom of merchants—Presumption—Rebuttal.***

A contract for the sale of lumber was in the following form:—"Contract by which our principals sell through the agency of Smith & Tyrer, Ltd." (the defts.), "wood brokers, Liverpool, and Messrs. Miller, Gibb & Co." (the plts.), "of Liverpool, buy the wood goods specified below, foreign measure, of the usual manufacture and of the classification of the surveyors at the port of shipment." The price was to include freight and insurance to South Africa. Then followed clauses in which reference was made to the "seller" and the "buyer," and there was an arbitration clause by which the parties agreed to submit all disputes arising out of the contract to arbitration in England, and in case any action was brought it was to be brought in England and determined according to English law. The contract was signed "By authority of our principals, Smith & Tyrer, Ltd., Chas. T. Tyrer, managing director, as agents." The contract was made by the defts. on behalf of foreign principals, who had given the defts. authority to make the contract on their behalf so as to pledge their credit, but whose names were not disclosed to the plts. In an action to recover damages for breach of the contract the plts. sought to make the defts. personally liable thereon under a general custom of merchants that when an agent contracts on behalf of a foreign principal he undertakes the liability of principal:—

Held, that, assuming that the custom still existed, it was one by which the agent alone was liable to the exclusion of the foreign principal; that the custom did not apply where it was inconsistent with the contract; that the contract sued on was one upon which the foreign principals were directly liable to the plts.; and that therefore the custom was inconsistent with the contract and was not applicable. *MILLER, GIBB & Co. v. SMITH & TYRER, LD.* - C. A. [1917] 2 K. B. 141; 86 L. J. (K. B.) 1259; 116 L. T. 753; 22 Com. Cas. 320; 33 T. L. R. 295

Sale of goods—Contract made during war—Heading "for and on behalf of" a foreign principal—Signature by agent without qualification—Right of agent to sue on contract—F.o.b. contract—Prohibition against export—Licence to export—On whom duty to apply for licence lies.

The plts., who carried on business in Manchester, gave to the defts., who were chemical manufacturers in Manchester, a bought note, dated Sept. 3, 1914, which was addressed to the defts. and was headed "From Messrs. H. O. Brandt & Co., 63 Granby Row, Manchester. For and on behalf of Messrs. Sayles Bleacheries, Saylesville, Rhode Island, U.S.A." The note stated "We have this day bought from you 60 tons pure aniline oil," and it was signed "H. O. Brandt & Co." There was evidence

PRINCIPAL AND AGENT (Foreign Principal)

—*continued.*

that during war time the destination of goods intended for export must be made known. The plts. having sued for non-delivery of the oil:—

Held, by Viscount Reading C.J. and Scrutton L.J., Neville J. dissenting, that the plts. were contracting parties and were entitled to sue upon the contract.

The contract was for monthly deliveries over five months "f.o.b. Manchester." After the contract was made the export of aniline oil was prohibited by an Order in Council, and this prohibition was in existence during the greater part of the five months, but licences to export were being granted in certain cases:—

Held, that the obligation of applying for a licence lay upon the buyers and not upon the sellers. *H. O. BRANDT & Co. v. H. N. MORRIS & Co.* - C. A. [1917] 2 K. B. 784; 117 L. T. 196

Undisclosed foreign principal—Liability of agent.

Where a written contract of sale is made by an agent on behalf of a foreign undisclosed principal, if the contract on its true construction plainly purports to create privity of contract between the foreign principal and the English buyer, the agent is not liable on the contract. *MERCER v. WRIGHT, GRAHAM & Co.* - Atkin J. 33 T. L. R. 343

Fraud.***Contract—Sale—Fiduciary relation—Rescission—Restitutio in integrum—Fall in value of the thing sold.***

Where a broker, pretending to execute a mandate to buy, sells his own property, the sale may be rescinded notwithstanding that the value of the thing sold has decreased between the date of the sale and the date of the action for rescission.

Dictum of Lord Cranworth in *Western Bank of Scotland v. Addie* (1867) L. R. 1 H. L. Sc. 145, 166, approved.

Dicta in *Clarke v. Dickson* (1858) E. B. & E. 148 disapproved. *ARMSTRONG v. JACKSON*

McCardie J. [1917] 2 K. B. 822; 86 L. J. (K. B.) 1375; 117 L. T. 479; 33 T. L. R. 444; 61 S. J. 631

Lien.***Indemnity for damage—Colliery—Subsidence—Equitable lien—Possible future claims.***

Where an agent has acted for his principal in working a colliery and so rendered himself liable to future claims for damage by surface owners, and moneys have subsequently come into his hands outside his agency but as trustee for his principal, the agent is not entitled, either upon principle or authority, to any equitable lien upon such moneys to answer possible future claims, where no liability has yet accrued and no cause of action by surface owners has yet arisen. *DYSON v. PEAT* - Eve J. [1917] 1 Ch. 99; 86 L. J. (Ch.) 204; 115 L. T. 700; [1917] H. B. R. 97; [1916] W. N. 375; 61 S. J. 131

Sale of Goods.

—Contract made during war.

See above, Foreign Principal, col. 313.

PRINCIPAL AND AGENT (Sale of Goods)—
continued.

Sale by sample—Agent acting for both parties—Notice to agent of defect in goods—Duty of agent to disclose information to buyer.

The defts. were brokers in London. In Oct., 1915, the owners of a parcel of 110 bags of cocoa about to arrive at Liverpool sent the bill of lading to the defts. with instructions to offer the cocoa for sale by auction at the London Commercial Sale Rooms in Mincing Lane, at the same time drawing their attention to the following note indorsed on the bill of lading:—"Bags in bad condition, stained and damp, cocoa mouldy," and requesting them carefully to examine the extent of the damage to avoid trouble. The defts. employed a competent firm at Liverpool to examine the cocoa on arrival in order that it might be properly described in the sale. The Liverpool firm reported that in only two out of the 110 bags was there any sign of damage, and that the damage in those two was very slight. They proposed therefore to remove the damaged portion, which would leave the residue in good merchantable condition. This was acceded to by the defts., and the Liverpool firm sent them samples of the bulk taken after the damaged part had been removed. The defts. accordingly felt themselves justified in offering the cocoa in the sale without comment. The plts., who had been sent a sample by the defts., bid for the cocoa at the sale, but as the bids were not high enough the cocoa was bought in. The defts. subsequently wrote to the plts. and offered it to them at a somewhat reduced price, the letter being accompanied by a further sample. The plts., who knew that the defts. were acting as agents for the sellers, agreed to purchase the cocoa and were charged in accordance with the practice of the trade $\frac{1}{2}$ per cent. brokerage. The plts., on the cocoa being delivered, examined it and found it to be unfit for use. It was not disputed that the sale was a sale by sample, but the plts. had precluded themselves from complaining as against the sellers that the bulk did not correspond with the sample, as they had omitted to give notice of objection within the time limited by the conditions of the sale. The plts., however, contended that, notwithstanding it was a sale by sample, the defts., having been employed by them for reward, were under a duty to disclose to them the statement as to the condition of the cocoa on the bill of lading, for they said that had they known of that statement they would never have bought the cocoa, and for breach of that duty they claimed damages.

Horridge J. *held* that where goods are sold by sample, the sale being effected by a broker acting (to the knowledge of the buyer) for both parties, the broker is under no duty to communicate to the buyer any depreciatory statement with regard to the quality of the goods which may have come to his knowledge, provided he honestly and without negligence believes that the statement is untrue; but that, if there is any duty on him in that respect at all, it is only to communicate such matters as an ordinary business man would think material, which, having regard to the report of the Liverpool firm, was

PRINCIPAL AND AGENT (Sale of Goods)—
continued.

not the case before him. He accordingly gave judgment for defts. *PAYNE & Co. v. LEWIS & PEAT* - - Horridge J. [1917] W. N. 195; 61 S. J. 507

PRINCIPAL MANSION-HOUSE—Appointment of trustees for purposes of Settled Land Acts.

See SETTLED LAND, col. 384.

PRIVILEGE—Ambassador.

See INTERNATIONAL LAW, col. 216.

PRIVY COUNCIL—Appeals.

See AUSTRALIA; CANADA; CEYLON; JUDICIAL COMMITTEE; PRIZE COURT; SOUTH AFRICA; STRAITS SETTLEMENTS.

PRIZE BOUNTY.

See PRIZE COURT, col. 329.

PRIZE COURT.

Appeal. See below, Requisitioning Order.

Cargo. See below, Contraband.

Continuous Voyage. See below, Contraband.

Contraband—

Compensation, col. 317.

Enemy Destination, col. 318

Enemy Firm, col. 322.

Freight, col. 323.

Infection. Doctrine of. See below, Passing of Property.

Damages. See above, Contraband.

Declaration of London, col. 323.

Discovery, col. 323.

Domicil. See below, Enemy Goods.

Enemy Destination. See above, Contraband.

Enemy Goods, col. 324

Enemy Ship, col. 325

Evidence, col. 326.

Freight. See above, Contraband.

Insurance Company. See above, Enemy Goods.

Neutral Goods, col. 326.

Neutral Port, col. 327.

Neutral Ship. See above, Contraband.

Passing of Property, col. 327.

Prize Bounty, col. 329.

Requisitioning Order, col. 331.

Rules. See above, Requisitioning Order.

Security for Costs, col. 331.

Transit, Goods in. See above, Passings of Property.

PRIZE COURT—continued.**Appeal.**

See below, Requisitioning Order, col. 331.

Cargo.

See below, Contraband, col. 317.

Continuous Voyage.

See below, Contraband, col. 320.

Contraband.**Compensation.**

Damages—Seizure of cargo under Reprisals O. in C. of Mar. 11, 1915—Construction of art. IV.—Release of cargo—Cargo owners' claim for damages and costs.

Cargo belonging and consigned to the claimants, a firm carrying on business in Chile, was laden on board a neutral vessel at Hamburg before the outbreak of war. The vessel sailed after the outbreak of war. She had to put into a Norwegian port for repairs, where she remained until Mar. 23, 1915. She then resumed her voyage to Chile. On Apr. 5 she was stopped by a British patrol vessel and sent into a British port, where the cargo was ordered to be discharged under art. IV. of the Reprisals O. in C. of Mar. 11, 1915, as being cargo of enemy origin laden on board a vessel which sailed from a port other than a German port after Mar. 1, 1915.

The Court ordered the goods to be released on the ground that the vessel must be dealt with by reference not to art. IV., but to art. II., of the Order, which provides that no vessel which sailed from a German port after Mar. 1, 1915 shall be allowed to proceed on her voyage with any goods on board laden at such port; and that, as she sailed from a German port before Mar. 1, she was immune from the obligation to discharge her cargo.

The cargo owners claimed damages and costs on the ground that the seizure and detention of their goods was unlawful:—

Held, that the claim must be disallowed. The legal question at issue was of importance and not easy to decide, and the obligation to pay damages and costs should not be imposed upon the Crown as a consequence of the mistaken construction placed upon the O. in C.

The Luna (1810) Edw. 190 followed. *THE SIGURD* - - - Evans, Pres. [1917] P. 250; 117 L. T. 639; [1917] W. N. 306; 34 T. L. R. 16; 62 S. J. 36

Neutral sailing ship—Cargo—O. in C. of Oct. 29, 1914—Declaration of London, art. 43.

By the Declaration of London O. in C. No. 2, 1914, dated Oct. 29, 1914, it was declared that during the present hostilities the convention known as the Declaration of London should, subject to certain additions and modifications therein specified, be adopted and put into force by His Majesty's Government. Art. 43 of the Declaration of London, which provides (inter alia) that if a vessel is encountered at sea while unaware of the declaration of contraband which applies to her cargo the contraband cannot be C.C.D.

PRIZE COURT (Contraband)—continued.

condemned except on payment of compensation, was not excepted by the terms of the O. in C. By the said Order chrome ore was declared to be absolute contraband.

In the prize proceedings for condemnation of a cargo of chrome ore shipped in June, 1914, from a foreign port on a Norwegian sailing vessel chartered by a German co., under a contract entered into in 1913 between an English co. and a German co., two claims were put in, one by the English co., the sellers, and the other by the Swedish co., which alleged that the ore had been purchased by them from the German co. No claim was made on behalf of the German co.

The Board approved the view of the President that art. 43 did not exclude the general rule applying that contraband belonging to an enemy on board a neutral vessel remained liable to condemnation without compensation. Accordingly the appeal of the Swedish co. was dismissed and that of the English co. withdrawn on the terms agreed between them and the Crown, which terms the board were prepared to approve.

Decision of the President, 114 L. T. 46, affirmed. *THE SORFAREREN* - - - J. C. 117 L. T. 259; 33 T. L. R. 526

Successful claim—Damages and costs—Suspicious circumstances.

Where contraband with an ostensible neutral destination has been seized as having an ultimate enemy destination, and where the goods have afterwards been released to the neutral owner by a Prize Court on the ground that in fact they had not an ultimate enemy destination, the owner is not entitled to costs or damages if there were suspicious circumstances justifying the seizure, and the Court is not bound, in considering whether there were circumstances of suspicion which justified the seizure, to confine its attention to those circumstances for which the owner is responsible, but may take into consideration the circumstance that on the known facts with reference to the international trade in goods of the kind in question the owner belongs to a class of importers of whom some must be engaged in re-exporting such goods or their products to an enemy country.

The fact that the Swedish War Trade Law of Apr., 1916, forbids Swedish subjects to give any assurance that goods or their products are not intended for export to Germany does not prevent the absence of such an assurance from being a suspicious circumstance within the above rule. *THE BARON STJERNBLAD* J. C. [1917] W. N. 372; 34 T. L. R. 106

Enemy Destination.

Conditional contraband—Condemnation of neutral ship.

Appeal from a judgment of the Prize Court, England [1916] P. 266.

The Hakan, a Swedish steamship, was captured at sea on Apr. 4, 1916, while on a voyage from Hangesund, Norway, to Lübeck, Germany, with a cargo of salted herrings. The ship was under a time charter dated Jan. 8, 1916, to a firm of German fish dealers for voyages to German ports. Foodstuffs had been declared

PRIZE COURT (Contraband)—continued.

conditional contraband on Aug. 4, 1914. A writ was issued by the Procurator-General claiming the condemnation of both ship and cargo, the former on the ground that she was carrying contraband goods. The cargo owners made no claim.

The President of the Admiralty Div. (in Prize) condemned both ship and cargo. The owners of the ship appealed.

The J. C. dismissed the appeal. *THE HAKAN* J. C. [1917] W. N. 289; 117 L. T. 619; 34 T. L. R. 11; 62 S. J. 23

Conditional contraband—Transshipment from enemy into neutral vessel—Named consignee—Ultimate enemy destination—O. in C. of Oct. 29, 1914—Declaration of London, 1909, arts. 35 and 43.

A cargo of cocoa beans shipped by a neutral firm in Ecuador on board a German vessel which took refuge on the outbreak of war at Las Palmas, was transhipped into the Dutch steamship *R.*, and bills of lading were made out whereby the beans were consigned to a neutral firm at Rotterdam.

By a Proclamation of Aug. 4, 1914, foodstuffs were declared conditional contraband, but in Nov., 1914, His Majesty's Government gave the Dutch Government a list of foodstuffs to be dealt with as contraband which did not include cocoa beans. This list was not sent to Spain. On Mar. 22, 1915, or the morning of Mar. 23, His Majesty's Government communicated to the Dutch Government that Great Britain would give the August Proclamation its full effect as regards foodstuffs. The *R.* sailed from Las Palmas on Mar. 23 about 4 p.m. on her voyage to Holland, and on Apr. 6 the cargo was seized at Portsmouth as contraband destined for an enemy base of supply.

The cargo was claimed by the Dutch consignees, on whose behalf it was argued, first, that the goods were not contraband; secondly, that they could not be condemned as they were consigned to named consignees in a neutral port and therefore were within the protection of clause 1 (3.) of the O. in C. of Oct. 29, 1914, modifying the Declaration of London; thirdly, that they could only be condemned, if at all, on payment of compensation under art. 43 of the Declaration of London; and, lastly, that the facts did not show the destination to be Germany:—

Held by the President (Sir Samuel Evans):

(i.) That the material time was the date of seizure when the goods undoubtedly were contraband, and that further, as the Proclamation of Aug. 4, 1914, stood without any qualification as regards Spanish ports, the *R.* must be deemed to have been aware that cocoa beans, as foodstuffs, were on the contraband list before she left Las Palmas;

(ii.) That the exceptions made in the O. in C. of Oct. 29, 1914, were only intended to operate in favour of bona fide neutral consignees in the business sense, and that a person who (as his Lordship found in the present case) acted merely as a conduit pipe to enable the goods to reach the enemy was not such a person as was intended by the expression "named consignee";

PRIZE COURT (Contraband)—continued.

(iii.) That art. 43 of the Declaration of London only applies to neutral ships and neutral cargoes, and accordingly, the *R.*'s cargo being enemy cargo of a contraband nature destined for the enemy, it was subject to condemnation without compensation even if the *R.*, when she sailed from Las Palmas could have been deemed to be unaware of the declaration of contraband applying to the cargo. *THE RYAN EVANS*, Pres. [1917] P. 145; 86 L. J. (P.) 182; 117 L. T. 347

Continuous voyage—Absolute contraband—Evidence—Condemnation.

A neutral vessel sailed from New York in Nov., 1914. Part of her cargo consisted of rubber, which was consigned by the claimant, an American citizen, to a Swede at Landsberona. The vessel was captured by a British cruiser. At the hearing in the Prize Court evidence was offered by the Crown to the effect that the final destination of the rubber was Germany. The President *held* that as the doctrine of continuous voyage and transportation, both as regards carriage by sea and land, was part of international law at the time of the commencement of the war in Aug., 1914, all goods which were intended for the use of the German Government, although nominally having a neutral port as their port of destination, must be condemned as lawful prize. From the order of condemnation the claimant appealed:—

Held, that the appellant's title had not been made out, and the probabilities of the case pointed to the version given at the original hearing being the true one. Appeal dismissed. Decision of the President [1915] P. 215 affirmed. *THE KIM* - J. C. 116 L. T. 577; 33 T. L. R. 415

Continuous voyage—Coffee.

The Court condemned as prize a large quantity of coffee seized on board the steamship *Liv* and nine other Scandinavian vessels, the ground of the condemnation being that the goods were intended to be forwarded to Hamburg, which was a base of supply for the enemy forces. *THE LIV* - *Evans*, Pres. 33 T. L. R. 466

Continuous voyage—Raw material destined for neutral factory—Product of raw material destined for enemy—Discovery of documents—Ambit of discovery.

A quantity of leather (contraband) consigned to the claimants, a firm of boot manufacturers in a neutral country, was seized as prize ex a neutral ship on the ground that it was either destined for the enemy as leather, or was going to the claimant's factory to be there made into military boots which were destined for the enemy forces.

An application on behalf of the Crown for an order for discovery of the claimant's books and documents relating to the sales of leather and boots from the year prior to the outbreak of war down to the date of seizure was resisted, *inter alia*, on the ground that if the leather was going to be made into boots the doctrine of continuous voyage did not apply, and therefore, whatever the ultimate destination of the boots, the leather could not be seized as prize:—

Held, (a), that contraband material, imported into a neutral country to be there manufactured

PRIZE COURT (Contraband)—continued.

into goods destined for the enemy, does not become part of the common stock of the country so as to defeat the doctrine of continuous voyage; and (b) that accordingly an order could be made directing the claimants to make discovery of the books and documents relating to their sales of boots as well as of leather from Aug., 1913, down to the date of seizure. *THE BALTO* - Evans, Pres. [1917] P. 79; 86

L. J. (P.) 83; 116 L. T. 319; 33 T. L. R. 244; 61 S. J. 399

Neutral ship—Neutral port—Condemnation of ship.

Appeal from a judgment of the President of the Admiralty Div. (in Prize), delivered on Aug. 22, 1916.

The Danish steamship *Hillerød*, bound from Philadelphia to Trondhjem and Gothenburg with a cargo of lubricating oil, was stopped at sea and directed to proceed to Kirkwall, where, on Nov. 16, 1916, the ship and cargo were seized. Lubricating oil was declared to be contraband on Mar. 11, 1915.

The cargo was claimed by J. Werterberg, a German by birth naturalized in the United States, and being the United States consular agent at Malmö, Sweden. The ship was claimed by Brix-Hansen & Co., of Copenhagen. Werterberg was the consignee named in the bills of lading and purported to be the charterer of the ship.

The President (Sir Samuel Evans) condemned both the cargo and the ship. He found that the cargo did not belong to Werterberg, but that it had been acquired by Germany. He condemned the ship upon the grounds that, first, the contraband cargo exceeded half the cargo, and the shipowners were consequently to be presumed to be parties to the ulterior voyage; and, secondly, that Brix-Hansen & Co. were directly associated with Werterberg in attempting to carry absolute contraband to the enemy, the case being a glaring attempt to mislead the Court.

Both Werterberg and Brix-Hansen & Co. appealed.

The J. C. dismissed both appeals. *THE HILLERÖD* - J. C. [1917] W. N. 380

Reprisals Order—Fruit shipped from United States to Sweden—Claim of Swedish Victualling Commission.

A quantity of dried fruit was shipped on Swedish steamships in United States ports for carriage to a Swedish port. The fruit was afterwards seized by the Crown on board the Swedish vessels under the "Reprisals" Order on the ground that the goods were contraband and destined ultimately for Germany. The fruit was claimed by the Swedish Victualling Commission:—

Held, on the facts, that the fruit belonged to the Commission, and was bona fide intended for consumption in Sweden, and therefore the claim must be allowed. *THE PACIFIC AND THE SAN FRANCISCO* - Evans, Pres. 33 T. L. R. 529

Wool to be combed in enemy country—Combed wool to be returned to neutral country—Doctrine of the Prize Court.**PRIZE COURT (Contraband)—continued.***

A number of bales of wool (absolute contraband) consigned to the order of the claimants, a neutral firm in Sweden, were seized as prize on the ground that the wool was destined for Germany. It was argued for the claimants that even if any portion of the wool had an enemy destination (which they denied), it was only going to Germany to be treated, and was to be returned to Sweden as combed or spun wool, and was therefore not liable to condemnation, notwithstanding that the waste wool with its by-products would be retained by the German spinners. The evidence established that the whole of the wool was destined for Germany:—

Held, that if absolute contraband is captured on its way to enemy territory a Court of Prize will not inquire as to what may ultimately become of it, and that the wool was subject to condemnation. *THE AXEL JOHNSON; THE DROTTNING SOPHIA* - Evans, Pres. [1917] P. 234; 86 L. J. (P.) 173; 117 L. T. 412; [1917] W. N. 271; 62 S. J. 72

Enemy Firm.

Enemy good—Trading between British and neutral branches of enemy firm—Trading with the Enemy Proclamation (No. 2)—Licence to trade—Correspondence with Trading with the Enemy Committee—Goods landed ex British ship—Seizure in warehouse—Limits of Port of Liverpool.

After the outbreak of war a quantity of hides was shipped on a British vessel by the Bangkok branch of an Austrian co. consigned to the co.'s branch in Manchester. The hides were landed in Liverpool and stored in a warehouse in Argyle Street, Liverpool, where they were seized as prize.

By par. 6 of the Trading with the Enemy Proclamation (No. 2) of Sept. 9, 1914, "where an enemy has a branch locally situated in British, allied, or neutral territory, not being neutral territory in Europe, transactions by or with such branch shall not be treated as transactions by or with an enemy."

It was contended (1.) that this paragraph and/or certain correspondence between the manager of the Manchester branch and the Trading with the Enemy Committee constituted a licence to the Manchester and Bangkok branches of the enemy company to trade; and (2.) that the warehouse in Argyle Street was outside the limits of the port of Liverpool, and that on these grounds the goods were immune from confiscation:—

Held, first, that par. 6 of the Trading with the Enemy Proclamation (No. 2) gave no protection to the goods. It afforded protection to a person acting within it from being convicted of the offence of trading with the enemy, but it had no application to the case of the transfer of goods belonging to an enemy from one branch house to another so as to affect the property in the goods, and could not be construed as taking away the right to seize enemy goods on a British ship or in a British port; secondly, that a licence from the Crown must be strictly construed and proved, and that the Trading with the Enemy Committee neither had the authority to give a licence which

PRIZE COURT (Contraband)—continued.

would defeat the rights of captors, nor purported to give such licence; and, thirdly, that the warehouse was a warehouse of the port of Liverpool, and on that ground, therefore, and on the broader ground that goods which had been subject to capture as enemy property while afloat remained subject to seizure when landed, that the hides were confiscable as prize. *THE* *ACHILLES* - - *Evans*, Pres. [1917] P. 218 ; 86 L. J. (P.) 170 ; 117 L. T. 414

Neutral partner—Commercial domicile—Cargo—Shipment before war.

Where at the outbreak of war a neutral, wherever resident, was a partner in a house of business trading in or from an enemy country, he has a commercial domicile in that enemy country and is to be deemed an enemy in respect of his property or interest in such business, unless he has within a reasonable interval after the outbreak of war discontinued or taken steps to dissociate himself from the business, and this theory of commercial domicile is not subject to an exception in a case where goods in which such partner has an interest have been shipped during peace, although if the goods were at sea at the outbreak of war and have been captured before such reasonable interval has elapsed the Court will in a proper case take notice of a discontinuance or dissociation after the capture, or may even adjourn proceedings in the Prize Court in order to give an opportunity for such discontinuance or dissociation.

Decision of *Evans*, Pres. [1916] P. 112 reversed. *THE ANGLO-MEXICAN* - - J. C. [1917] W. N. 380 ; 34 T. L. R. 149

Freight.**Shipowners' claims to.**

Neutral shipowners are not entitled to freight in respect of the carriage of contraband. *THE JEANNE*; *THE VERA*; *THE FORSVIK*; *THE ALBANIA* - - *Evans*, Pres. [1917] P. 8 ; 86 L. J. (P.) 71 ; 115 L. T. 838 ; 33 T. L. R. 57

Infection, Doctrine of.

* See below, *Passing of Property*, col. 327.

Damages.

See above, *Contraband*, col. 317.

Declaration of London.

See above, *Contraband*, col. 319, and below, *Enemy Goods*, col. 324.

Discovery.**Enemy destination—Practice—Prize Court Rules, 1914, O. IX., r. 1.**

A cargo of hides and tanning materials consigned in a Swedish ship from South America to a Swedish port was seized in Sept., 1915, in the course of the voyage. A writ was issued claiming the condemnation of the cargo as contraband. The consignee, a Swedish subject, claimed the cargo and alleged by his affidavits that it had been bought by him partly for his tanning business in Sweden, and partly for sale to cus-

PRIZE COURT (Discovery)—continued.

tomers in that country. The President made the following order for discovery: "that the claimant do within twenty-one days make discovery on oath of all books of account, letter books, and usual commercial documents relating to the matters in question, including the claimant's business books from January 1, 1914, up to the date of seizure, showing all purchases from the shippers of the goods seized during the same period, or of goods similar thereto, and of the sales of such goods by the claimants, and all contracts, policies of insurance, cables and correspondence relating to the said purchases and sales; and also the same books and documents relating to such goods, or goods similar thereto, which were sold by the claimant for delivery in Germany during the same period." The order was made subject to evidence being filed that the Procurator-General had reason to suspect that the cargo had an enemy destination:—

Held, that there was jurisdiction under O. IX., r. 1, of the Prize Court Rules to make the order, that the documents particularized therein related to the question in the action, and that the discretion of the President to make the order should not be interfered with. *THE CONSUL CORFITZON* - J. C. [1917] A. C. 550 ; 86 L. J. (P.) 136 ; 116 L. T. 674 ; [1917] W. N. 212 ; 33 T. L. R. 456 ; 61 S. J. 576

Domicil.

See below, *Enemy Goods*, col. 324.

Enemy Destination.

See above, *Contraband*, col. 318.

Enemy Goods.**Commercial domicile—Goods of partnership firm in neutral country—Enemy partners—No partner resident in neutral country—Condemnation of goods as enemy property.**

After the outbreak of war with Germany certain goods belonging to a partnership firm at Buenos Aires, and shipped before the war on a British ship, were seized as prize. All the partners of the firm were Germans resident at Antwerp, who had been expelled from Belgium as enemy subjects shortly after the outbreak of war:—

Held, that, although a subject of a belligerent State can acquire a commercial domicile in a neutral State which will protect his goods captured at sea from condemnation, residence in the neutral State is an essential condition of such domicile; and that, as none of the enemy partners of the firm were resident in the Argentine Republic at the time of seizure, the goods must be regarded as enemy property and subject to condemnation. *THE HYPATIA* *Evans*, Pres. [1917] P. 36 ; 86 L. J. (P.) 44 ; 116 L. T. 25

"Goods" or "commodities"—German Government bonds—Seizure from letter mail—Reprisals Order in Council of Mar. 11, 1915.

German Government bonds, which had been sent from a German banking co. in Berlin to a firm in Copenhagen to be forwarded by registered post to a bank in Chicago, were seized as goods or commodities of enemy origin, under

PRIZE COURT (Enemy Goods)—continued.

the Reprisals Order in Council of Mar. 11, 1915, from the letter mail of the Danish steamship which was carrying them from Copenhagen to the United States :—

Held, that the bonds were "goods" or "commodities" within the meaning of those words in the Order, and, being of enemy origin, that they were subject to detention until the conclusion of peace, to be then dealt with as the Court might order. *THE FREDERIK VII.*

Evans, Pres. [1917] P. 43; 86 L. J. (P.) 55; 116 L. T. 21; 33 T. L. R. 133

Goods shipped to "selling agents"—Passing of property.

The appellants, an American co., made an agreement with a German co., whereby the latter were to act as the appellants' "selling agents," the agreement providing that the appellants were to be paid not what their goods realized on being sold by the German co. but an arranged price. Under this agreement the appellants shipped a quantity of pig lead to the German co., and it was seized as prize :—

Held, on the facts, that before seizure the appellants had parted with the property in the goods to the German co. and therefore the goods must be condemned.

Decision of Evans, Pres., 32 T. L. R. 139, affirmed. *THE KRONPRINSESSIN CECILIE*

J. C. 33 T. L. R. 292

Insurance company—Claim by.

A cargo of 24,000 bushels of wheat, shipped by the American Grain Co. on board the Belgian steamship *Gothland* at Montreal and consigned to Rotterdam to German merchants, was insured by the St. Paul Fire and Marine Insurance Co., of Richmond, United States of America, before the outbreak of war against sea risks only. During the voyage the vessel put into Southampton for repairs, having, together with her cargo, sustained damage by stranding. She was still lying in dock at the commencement of hostilities, and on Feb. 11, 1915, the cargo, which had been discharged into warehouses in the port, was seized as prize. The insurance co., having paid under the policy as for a constructive total loss, and having taken what purported to be an assignment of all the rights and remedies of the assured, claimed the release of the proceeds of the sale of the cargo.

Evans, Pres. *held* that the owners in fact of the goods—apart from any legal obligations which might have arisen in respect of the goods—were the German merchants, and therefore at the date of the seizure they were the proper subject-matter of confiscation, and ordered the condemnation of the 24,000 bushels of wheat as enemy property in favour of the Crown as droits of admiralty. *THE GOTHLAND*

Evans, Pres. 86 L. J. (P.) 23

— Passing of property.

See below, Passing of Property, col. 327.

Enemy Ship.

— Destruction.

See below, Prize Bounty, col. 329.

PRIZE COURT (Enemy Ship)—continued.*

Yacht—Outbreak of war—Days of grace—"Navire de commerce"—Hague Convention, No. 6, arts. 1, 2.

A racing yacht is not a merchant ship ("navire de commerce") within the meaning of the Hague Convention, No. 6, arts. 1, 2, and consequently is not entitled to the days of grace accorded to merchant ships thereunder. An enemy racing yacht seized in a British port immediately upon the outbreak of war is, therefore, subject to condemnation as prize according to the ordinary rule applied to enemy property seized in port. *THE GERMANIA*

J. C. [1917] A. C. 375; 86 L. J. (P.) 94; 116 L. T. 362; [1917] W. N. 109; 33 T. L. R. 273; 61 S. J. 444

Evidence.

Cargo—Whether destined for enemy—Onus of proof.

The Commercial Court for Malta (in Prize) found that a cargo of wheat seized as prize was on its way to an enemy destination and made an order that it should be condemned. At the hearing, the captors adduced no evidence in contradiction of the claimants' case, but subjected the whole of the transactions to the closest scrutiny, and suggested that in truth the wheat was on its way to an enemy destination :—

Held, that, as the documents produced by the claimants were genuine and regular in form, in the absence of evidence to refute them they were deserving of credit. The decision below was based on assumptions that were mere conjectures and were therefore inadmissible, whereas the claimants' evidence discharged such burden as rested on them and sufficed to establish their claim on the facts so proved.

Decision appealed from reversed. *THE ELEFTHERIOS K. VENIZELOS (PART CARGO EX)*

J. C. 116 L. T. 363; 33 T. L. R. 260

Freight.

See above, Contraband, col. 323.

Insurance Company.

See above, Enemy Goods, col. 325.

Neutral Goods.

Branch of neutral company in enemy country—Goods shipped before war to branch in allied country—National character.

The Board reversed a decree of the Egyptian Prize Court, which had rejected the claim of the appellants, an American co., to certain goods seized as prize on board the German steamship *Lutzow* and had pronounced that at the time of seizure the goods belonged to a branch of the appellants in Germany and were liable to confiscation, the ground of the reversal being that the goods were not the concerns of the appellant's German branch, so as to be liable, on the assumption that the business of that branch was continued after the outbreak of war, to be condemned as enemy property. *THE LUTZOW*

J. C. [1917] W. N. 381; 34 T. L. R. 147

PRIZE COURT—*continued*.**Neutral Port.**

Jurisdiction—Suez Canal—Prize staying over twenty-four hours—Suez Canal Convention, 1888, arts. IV., VI.

The Suez Canal Convention, 1888, to which Great Britain, Germany, and other Powers were parties, provided, by arts. IV. and VI., that the stay of prizes of war at Port Said or in the roadstead of Suez should not exceed a period of twenty-four hours, except in case of distress. By art. IX. the Egyptian Government, which at the material time was controlled by the British Government, was to take the necessary measures for the execution of the Convention.

On Aug. 15, 1914, a British cruiser captured a German steamship in the Red Sea and escorted her to Suez. The prize stayed in the roadstead of Suez for a period of thirty-two hours, a prize crew was then put on board, and she was taken to Alexandria, where she was condemned by the Prize Court:—

Held, that assuming that there was a breach of the Convention, that fact was not cognizable by the Prize Court as a ground for the release of the prize. *THE SUDMARK* - J. C. [1917] A. C. 620; 86 L. J. (P. C.) 181; 116 L. T. 804; 33 T. L. R. 575; 67 S. J. 37

Neutral Ship.

See above, *Contraband*, col. 319.

Passing of Property.

Cargoes partly contraband and partly "Innocent"—Doctrine of infection—Post-bellum shipments—Transfers in transitu—Enemy vendors—Neutral purchasers.

A quantity of coffee was shipped by the Salvador branches of a Hamburg firm on two neutral vessels consigned to a neutral firm in Sweden. Portions of the coffee on both vessels being destined for Hamburg were confiscable as contraband, but other portions were destined for neutral purchasers in Sweden who had entered into contracts of purchase, some before and some after the date of shipment, and some of whom had paid for their consignments before the cargoes were seized as prize:—

Held, that, it being well established according to prize law (a) that "innocent" goods laden on board a vessel are subject to condemnation if their owner has on board other goods which are confiscable contraband, and (b) that during hostilities, or imminent and impending danger of hostilities, the property in cargoes of belligerent parties cannot change its national character during the voyage, it followed that the contracts of purchase were ineffective and the property remained in the enemy shippers; and as they had goods confiscable as contraband on board the same vessels the "innocent" goods were subject to the like penalty. *THE KRON-PRINCESSAN MARGARETA. THE THAI*

Evans, Pres. [1917] P. 114; 86 L. J. (P.) 149; 116 L. T. 508; 33 T. L. R. 258; 61 S. J. 415

Affirmed on appeal - J. C. 33 T. L. R. 292

Goods—Neutral claimant—Transfer to enemy

PRIZE COURT (Passing of Property)—*continued*.

after seizure—Bill of lading against acceptance—Intention—Purchaser or agent for sale.

A claimant to goods seized as prize must prove his right thereto at the date when he comes before the Court as owner; it is not sufficient that he was owner at the date of the seizure.

When shippers of goods discount a draft upon the consignee and authorize the discounters to hand to him a bill of lading, to the order of, and indorsed by, the shippers, upon his acceptance of the draft, the intention to be inferred, according to general mercantile understanding, is that the ownership of the goods is to pass to the consignee when he accepts the draft. That inference may be modified, or rebutted, by particular arrangements between the shippers and the consignee, and is subject to the rules which arise out of a state of war existing, or imminent at the beginning of the transaction. The transfer of the property upon the acceptance of the draft is consistent with the consignee being either a purchaser from the shippers or their agent for the sale of the goods. *THE PRINZ ADALBERT* - J. C. [1917] A. C. 586; 86 L. J. (P. C.) 165; 116 L. T. 802; [1917] W. N. 232; 33 T. L. R. 490; 61 S. J. 611

Goods sent by parcels post—Seizure under Reprisals Order in Council of Mar. 11, 1915.

A number of parcel post packages were seized under the Reprisals Order in Council of Mar. 11, 1915, from the parcels mail of a Danish steamship bound from Copenhagen to New York as being goods of enemy origin and also as enemy property. The goods, which were manufactured in Germany and left the factories after the date of the Reprisals Order, had been ordered, and payment made, by various firms in America before the date of the Order, and in some cases before the outbreak of war.

It was contended on behalf of these firms that the goods when seized were neutral goods as the property passed to the purchasers when the goods left the factories:—

Held, that in time of war goods shipped from an enemy country to a neutral country, or from a neutral to an enemy country, are regarded as enemy property, qua the rights of belligerent captors, until delivery, and that it makes no material difference that at the one end or the other there is a transit by land.

Held, therefore, that the packages must be regarded as enemy property as well as of enemy origin, and that they (or their proceeds if sold) must be detained until the conclusion of peace. *THE UNITED STATES* - Evans, Pres. [1917]

P. 30; 86 L. J. (P.) 52; 116 L. T. 19; 33 T. L. R. 134

Transfer—Imminence of war.

THE SOUTHFIELD - Evans, Pres. [1917] A. C. 390, n.

Transit, Goods in—Apprehension of war—Fraud on belligerent's rights—Seizure by allied belligerent.

A transfer of goods at sea induced by the transferor's apprehension of hostilities between the State to which he owes allegiance and another State is deemed to be in fraud of the

PRIZE COURT (Passing of Property)—*continued.*

belligerent rights of that other State only; it is not invalid as against a capture by a belligerent State allied thereto unless it is proved, or to be presumed, that it was made in apprehension of war with that allied State.

A presumption arises from the existence at the time of the transfer of a general apprehension of war with the State of the captors, but can be discharged by showing that the transfer was made pursuant to a pre-existing contract.

The Southfield ([1917] A. C. 390, n.) approved. *THE DAKSA* - J. C. [1917] A. C. 386; 86 L. J. (P. C.) 130; 116 L. T. 364; [1917] W. N. 120; 33 T. L. R. 281; 61 S. J. 431

Prize Bounty.

Destruction of enemy transport—Enemy "armed ship"—*Naval Prize Act, 1864* (27 & 28 Vict. c. 25), s. 42—*O. in C., Mar. 2, 1915.*

An enemy transport carrying 6000 troops armed with rifles and six field guns was torpedoed and sunk by a British submarine. There was no evidence whether the transport carried any armament, but she belonged to a class of fleet auxiliary vessels which were usually armed with a few six-pounder guns.

On a motion by the officers and crew of the submarine for prize bounty under an *O. in C.* of Mar. 2, 1915, whereby, pursuant to the provisions of s. 42 of the *Naval Prize Act, 1864*, a sum calculated at the rate of 5*l.* for each person on board the enemy's ship at the beginning of the engagement was distributable among such of the officers and crews of any of His Majesty's ships of war as were actually present at the taking or destroying of any "armed ship" of the enemy:—

Held, that an "armed ship" meant a fighting unit of the enemy's fleet commissioned and armed for offensive action in a naval engagement, and that as the applicants had not proved that the transport was such a ship the motion must be dismissed. *H.M. SUBMARINE VESSEL E 14* - Evans, Pres. [1917] P. 85; 86 L. J. (P.) 86; 116 L. T. 192; [1917] W. N. 80; 33 T. L. R. 226; 61 S. J. 432

Destruction of enemy warship—Aeroplane assistance—R.N.A.S. pilots and observers—Naval Prize Act, 1864 (27 & 28 Vict. c. 25), s. 42—*O. in C., Mar. 2, 1915.*

An enemy warship was destroyed by two of His Majesty's monitors with the assistance of two aeroplanes, the pilots and observers of which were specially attached to the monitors for the purpose of the attack and were borne on the ships' books:—

Held, that the pilots and observers formed part of the crews of the monitors within the meaning of s. 42 of the *Naval Prize Act, 1864*, and therefore were entitled to share in the prize bounty distributable in accordance with the provisions of that section. *In re KÖNIGSBERG (GERMAN CRUISER)*. *H.M.S. SEVERN AND H.M.S. MERSEY* - Evans, Pres. [1917] P. 174; 86 L. J. (P.) 129; 116 L. T. 829; [1917] W. N. 238; 33 T. L. R. 474

Destruction of enemy warships—Combined naval and military operations—Naval Prize Act,

PRIZE COURT (Prize Bounty)—*continued.*

1864 (27 & 28 Vict. c. 25), s. 42—*O. in C., Mar. 2, 1915.*

The officers and crews of His Majesty's ships are not entitled to prize bounty under s. 42 of the *Naval Prize Act, 1864* (put in force by an *O. in C.* of Mar. 2, 1915), for the destruction of enemy ships of war, if the destruction was the result of joint naval and military operations although the land and sea forces were operating under separate commanders. *THE TRIUMPH; THE USK. In re THE SURRENDER OF TSINGTAU* Evans, Pres. [1917] P. 127; 86 L. J. (P.) 105; 116 L. T. 512; [1917] W. N. 166; 33 T. L. R. 331; 61 S. J. 508

Destruction of enemy warships—Squadron action—Vessels "actually present"—*Naval Prize Act, 1864* (27 & 28 Vict. c. 25), s. 42—*O. in C., Mar. 2, 1915.*

By Order in Council of Mar. 2, 1915, His Majesty, in accordance with the provisions of s. 42 of the *Naval Prize Act, 1864*, declared his intention to grant as prize bounty for distribution among such of the officers and crews of any of his ships of war as were actually present at the taking or destroying of any armed ship of any of His Majesty's enemies a sum calculated at the rate of 5*l.* for each person on board the enemy's ship at the beginning of the engagement.

On Dec. 7, 1914, a British squadron of warships, which were searching for a squadron of German warships, arrived at Port Stanley in the Falkland Islands. A council of war was held on board the flagship, and it was decided that *H.M.S. Canopus*, which had been lying at Port Stanley for some weeks, should remain there for the defence of the port. The *Canopus* was firmly embedded in the mud, where she had been grounded in a position to obtain an all-round fire to seaward, and her double bottoms had been flooded to keep her steady. On the approach of two enemy cruisers the next morning, being in a position to fire over the land, she fired two salvos with her 12-inch guns at a range of 11,000 yards, and there was evidence that a ricochet from the second salvo hit the base of the after funnel of one of the cruisers and killed five men. The enemy vessels then steamed away to rejoin their squadron, and the British squadron, with the exception of the *Canopus*, proceeded out of harbour. A general chase ensued, and late in the afternoon, after a running fight, the enemy squadron was brought to action and four of the enemy ships were sunk, the main action taking place over 100 miles away from Port Stanley.

On a motion on behalf of the officers and crew of *H.M.S. Canopus* to share in the sum of 12,160*l.* previously awarded as prize bounty to the British squadron in respect of the destruction of the enemy ships:—

Held, that the *Canopus* did not form a part of the squadron or take part in the engagement, and that the officers and crew were not entitled to share in the bounty as being actually present at the destruction of any of the enemy ships within the meaning of s. 42 of the *Naval Prize Act. In re FALKLAND ISLANDS BATTLE. Ex parte H.M.S. CANOPUS* Evans, Pres. [1917] P. 47; 86 L. J. (P.) 48; 116 L. T. 23; 33 T. L. R. 146

PRIZE COURT—*continued.***Requisitioning Order.**

Special leave to appeal—Cause for investigation—Discretion of judge—Prize Court Rules, O. XXIX., r. 1.

The Judicial Committee will not grant special leave to appeal from a requisitioning order made by the judge of the Prize Court under the Prize Court Rules, O. XXIX., it not being disputed that the goods were urgently required for the prosecution of the war, unless, in their Lordships' opinion, the judge, in determining that there was cause for investigation so that an immediate release to the claimant would be improper, applied the wrong principles or came to an obviously erroneous decision.

Special leave to appeal refused without deciding whether there was an appeal as of right.

Rule in *The Zamora* [1916] 2 A. C. 77 affirmed. *THE CANTON* - J. C. [1917]

A. C. 102; 86 L. J. (P.) 30; 115 L. T. 845; [1916] W. N. 384; 33 T. L. R. 65

Rules.

See above, **Requisitioning Order**, col. 331.

Security for Costs.

Claimant out of jurisdiction—Practice—Judicial discretion—Prize Court Rules, O. XXIII., r. 2.

By O. XVIII., r. 2, of the Prize Court Rules "any person instituting a proceeding, other than a cause for condemnation, or making a claim, and being ordinarily resident out of the jurisdiction of the Court, may be ordered to give security for costs, . . . , and the proceedings may be stayed until such security is given."

The Procurator-General claimed the condemnation, as goods having an enemy destination or as enemy property, of pork consigned from the United States to the appellant in Sweden. The appellant, who was ordinarily resident at Gothenburg, filed a claim to the goods, as his property intended exclusively for consumption in Sweden, the claim being supported by an affidavit, and exhibited documents. The President, without any evidence on the part of the Crown, made an order that the appellant should give 100*l.* security for costs:—

Held, that it did not appear that the discretion conferred by the rule had not been exercised judicially, and that the order was valid. *THE STANTON* - J. C. [1917] A. C. 380; 86 L. J. (P.) 98; 116 L. T. 360; [1917] W. N. 121; 33 T. L. R. 282; 61 S. J. 461

Transit, Goods in.

See above, **Passing of Property**, col. 327.

PROBATE.

Action, col. 332.

Administration de bonis non, col. 332.

Compromise. See **WILL**.

Costs, col. 332.

PROBATE—*continued.*

Domicil, col. 333.

Lost Will. See below, **WILL**.

Receiver, col. 333

Soldier's Will. See below, **WILL**.

Will—

Knowledge and Approval, col. 334.

Lost Will, col. 334.

Soldier's Will, col. 334.

Action.

See **PARTICULARS**, col. 296; below, **Receiver**, col. 333, and **WILL**, col. 463.

Administration de bonis non.

Rival claimants to grant—Will—Construction.

A devise or bequest over, in terms made dependent upon the marriage of the donee of the preceding estate, is to be extended, by implication, so as to take effect on the determination of that estate by the death of such donee.

The testator by his will gave all his property to his wife "during her widowhood," and after her death directed that the property should belong and be made over to the child or children "issue of our marriage"; should, however, the widow remarry, "then the whole of my property shall at once be made over legally to the offspring of our marriage and if they are minors the whole to be under trusteeship"; also, should the issue of the marriage "die out," then on the remarriage of the widow the testator directed that the property should be made over to "the legal next of kin and heirs descendants of my family." No appointment of executor or trustee was made in the will.

The widow, who did not marry again, took out letters of administration in 1883 with the will annexed, and, having intermeddled in the estate, died in Nov., 1915, leaving a will and appointing executrices, who duly proved the same, and in Mar., 1916, as such legal personal representatives, obtained a grant of letters of administration to the estate of the testator's only child, who died in 1887, aged eleven years.

Upon a suit in the Probate Division for letters of administration de bonis non with the will of the testator, David Griffiths, annexed:—

Held, that the child of the testator did not take a vested interest, but only an interest contingent upon his surviving the remarriage or death of his mother, the testator's widow, and that the grant now sought should go to the plt., a daughter of the testator's deceased brother and one of the testator's next of kin, as against the defts. who claimed the grant as the executrices of the widow. *In re GRIFFITHS' ESTATE. MORGAN v. STEPHENS* - Low J. [1917] P. 59; 86 L. J. (P.) 42; 116 L. T. 382

Compromise.

See **WILL**, col. 463.

Costs.

Executor—Propounding document as will—Failure to establish—Liability for costs.

PROBATE (Costs)—continued.

Where an executor propounds as the will of the testator a document which is not genuine and which he fails to establish, the Court has jurisdiction to order him to pay the costs of the action even if he has not been guilty of any breach of duty. *In re JEFFRIES; HILL v. JEFFRIES* - - - C. A. 33 T. L. R. 80

Domicil.

Naturalized British subject—Dying in foreign country—No administration granted by foreign Court—Wills Act, 1861 (24 & 25 Vict. c. 114), s. 2.

The deceased had his domicil of origin in France. He resided and carried on business in London from 1858 until 1905, and took out a certificate of naturalization in England in 1871. In 1905 he returned to France, where he bought freehold property and resided on it until his death, which took place on Jun. 10, 1917. He left a will made in England in the English form, dated May 22, 1914, in which he described himself as of Boves, in France, residing temporarily in England, and directed that his will should be construed according to English law. He appointed executors, one of whom applied for probate.

A daughter of the testator, who resided in France, commenced proceedings in the French Court and asked for the appointment of a receiver to administer the testator's property in France, but no order had been made in these proceedings. She had entered a caveat in England. The English executor took out a summons for the stay of contentious proceedings and a grant to him of probate of the English will. The registrar made an order in the terms of the summons; the daughter appealed, and the appeal summons was adjourned into Court.

Evans, Pres. affirmed the registrar's order. *In re THE ESTATE OF EUGENE COCQUEREL*

Evans, Pres. [1917] W. N. 359

Lost Will.

See below, Will, col. 334.

Receiver.

Intestacy, Supposed—Cancelled will—Receiver pending probate—Probate action—Proceedings—Practice.

Among the papers of a person supposed to have died intestate was found a will purporting to be cancelled, and one of the next of kin issued a writ in the Chancery Division against the executor named in the will, asking for the appointment of a receiver of the deceased's estate until a legal personal representative had been constituted, and moved for a receiver. Pending the hearing of the motion the deft. commenced an action in the Probate Court for probate in solemn form, and, on the hearing of the motion, opposed the appointment of a receiver on the ground that it was wholly unnecessary, it being the usual practice in the Probate Court to appoint a receiver or administrator pendente lite. The facts were not in dispute and the estate was not in jeopardy:—

Held, that no ground was shown for ousting

PROBATE (Receiver)—continued.

the jurisdiction of the Court, and a receiver was appointed. *In re OAKES. OAKES v. L'ORCHERON*
Neville J. [1917] 1 Ch. 230; 86 L. J. (Ch.) 303; 115 L. T. 913; [1916] W. N. 428; 61 S. J. 202

Soldier's Will.

See below, Will, col. 334.

Will.**Knowledge and Approval.**

Striking out words—Will read over to competent testator—Presumption of knowledge and approval—Evidence required to rebut presumption.

Although since the decision of *Fulton v. Andrew* (1875) L. R. 7 H. L. 448 it can no longer be considered a binding rule of law that, in the absence of fraud or suspicion of fraud, the fact that a capable testator has read or had read over to him a will or codicil which he afterwards executes must be taken for the purposes of probate as absolute proof that he knew and approved all its contents, those circumstances afford a very strong presumption of his knowledge and approval. This presumption can be set aside only by the clearest evidence that some part of the document read over was not really part of his will. *GREGSON v. TAYLOR*

Hill J. [1917] P. 256; 86 L. J. (P.) 124; 117 L. T. 318; 61 S. J. 578

Lost Will.

Evidence—Contents—Attestation clause—Execution—Attesting witnesses not produced—No evidence of their identity—Presumption of due execution.

Where a will proved to have existed has been lost or accidentally destroyed, and there is satisfactory evidence of the contents, and that the will appeared to be duly executed and attested, the Court will pronounce for the will according to its tenor as given in evidence, notwithstanding that the attesting witnesses cannot be found or identified. *IN THE ESTATE OF C. R. PHIBBS, DECEASED* - - Low J.
[1917] P. 93; 86 L. J. (P.) 81; 116 L. T. 575; [1917] W. N. 79; 33 T. L. R. 214

Soldier's Will.

Appointment of guardians of infant son—Sufficient disposition of personal estate to make a soldier's will within Wills Act, 1837 (1 Vict. c. 26), s. 11.

A guardian of a child can be appointed by a will only if the will satisfies the provisions of the Act 12 Car. 2, c. 24, s. 8, and therefore cannot be appointed by a soldier's will within the Wills Act, 1837 (1 Vict. c. 26), s. 11. Neither that Act nor the Statute of Frauds (29 Car. 2, c. 3), s. 23, gives power to appoint a guardian by a soldier's will. A direction to a trustee under an existing will to deal with personal estate, by paying the income to a person for the benefit of an infant, is a valid disposition of personal estate within s. 11 of the Wills Act, 1837. *IN THE ESTATE OF MAJOR L. S. TOLLEMACHE, DECEASED*

Horridge J. [1917] P. 246; 86 L. J. (P.) 154; 116 L. T. 762; [1917] W. N. 257; 33 T. L. R. 505; 61 S. J. 656

PROBATE (Will)—*continued*.*Marriage — Revocation — Wills Act, 1837*

(1 Vict. c. 26), ss. 9, 11, 18.

The will of a soldier on actual military service, whether the same be executed according to the provisions of s. 9 or s. 11 of the Wills Act, 1837 (1 Vict. c. 26), or not, falls within the general provision contained in s. 18 and is revoked by the testator's subsequent marriage. *IN THE ESTATE OF JOHN WARDROP, DECEASED*

Shearman J. [1917] P. 54; 86 L. J. (P.) 37; 115 L. T. 720; 33 T. L. R. 133; 61 S. J. 171

PRODUCE—Agricultural holding—Sale.*See LANDLORD AND TENANT, col. 241.***PROFITS**—Commission.*See COMMISSION, col. 83.*

— Computation of—Limited company.

See AUSTRALIA, col. 54.

— Contingent bequest — Leasehold — Destination of.

See WILL, col. 472.

— Excess profits duty.

See COMMISSION, col. 83, and REVENUE, col. 355.

— Foreign possessions—Place of assessment.

See REVENUE, col. 358.

— Income tax—Cemetery company.

*See REVENUE, col. 358.***"PROFITS AVAILABLE FOR DISTRIBUTION AS DIVIDEND."***See COMPANY, col. 91.***PROHIBITION.***See APPEAL, col. 23.*

— Military service—Rejection.

See ARMY, col. 39.

— Rule nisi—Misleading affidavit—Summary discharge of rule—Inherent power in Court.

*See REVENUE, col. 359.***PROOF**—Bankruptcy—Rejection.*See BANKRUPTCY, col. 62.*

— Burden of—Evidence.

See INSURANCE, col. 201, and PRIZE COURT, col. 326.

— Compensation.

See WORKMEN'S COMPENSATION, col. 516.

— Debt—Bankruptcy.

See BANKRUPTCY, col. 62.

— Right of—Bankruptcy.

*See ALIEN ENEMY, col. 12.***PROPERTY**—Enemy.*See PRIZE COURT, col. 324.*

— Passing of—Sale of goods—Appropriation to contract.

See SALE OF GOODS, col. 367.

— Passing on death.

See REVENUE, col. 354.

— Time of war.

*See PRIZE COURT, col. 327.***PROPERTY TAX**—Landlord's—Deductions.*See LANDLORD AND TENANT, col. 244.***PROSPECTUS**—Company—Untrue statements.*See COMPANY, col. 90.***PROTECTION**—Justices.*See JUSTICES, col. 238.***PROTECTION ORDER.***See LICENSING ACTS, col. 252.***PROTECTOR OF SETTLEMENT.***See TAIL, TENANT IN, col. 429.***PROVISIONAL ITEM**—Building contract.*See BUILDING, col. 68.***PROXIES**—Meeting—Company.*See COMPANY, col. 91.***PROXIMATE CAUSE** — Loss — Insurance against loss through consequences of hostilities.*See INSURANCE (MARINE), col. 210.***PROXY**—Voting by—Company—Meeting.*See COMPANY, col. 91.***PUBLIC HEALTH**—Nuisance—Notice to abate — Person responsible for nuisance "cannot be found"—Notice to owner of premises on which nuisance exists—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 94.

The Public Health Act, 1875, s. 94, provides that "the local authority shall, if satisfied of the existence of a nuisance, serve a notice on the person by whose act default or sufferance the nuisance arises or continues, or, if such person cannot be found, on the owner or occupier of the premises on which the nuisance arises requiring to abate the same . . ."

The drain connecting a house, occupied by a tenant, with the sewer became clogged so that the sewage would not pass through. There was nothing to show what caused the stoppage. The local authority served a notice to abate the nuisance upon the owner of the house, under s. 94, and took proceedings against him for non-compliance therewith. The magistrate found as a fact that the person by whose act, default or sufferance the nuisance arose "could not be found," and held that the local authority could proceed against the owner:—

Held, that, there being nothing to show what caused the stoppage of the drain and the consequent nuisance, the magistrate could properly find that the person by whose act, default, or sufferance the nuisance arose "could not be found," within the meaning of s. 94, and that the local authority were therefore entitled to serve the notice upon the owner of the premises and to proceed against him.

RHYMNEY IRON CO. v. GELLIGER D. C.

Div. Ct. [1917] 1 K. B. 589; 86 L. J. (K. B.)

564; 15 L. G. R. 240; 116 L. T. 339;

[1917] W. N. 42; 33 T. L. R. 185;

81 J. P. 86

— Street—Sewering—Paving.

See LOCAL GOVERNMENT, col. 263.

PUBLIC POLICY—Illegality—Contract.
See **CONTRACT**, col. 107, and **DIVORCE**,
col. 141.

PUBLIC THOROUGHFARE—Obstruction.
See **HIGHWAY**, col. 191.

PUBLIC TRUSTEE—Costs.
See **REVENUE**, col. 353.

PUNISHMENT—Evidence in mitigation of.
See **CRIMINAL LAW**, col. 132.

PURCHASE—Debts—Bankruptcy.
See **BANKRUPTCY**, col. 60.

— Electric light company—System—Municipal
corporation—Agreement—Severance of
municipal district.
See **CANADA**, col. 69.

— Shares—Company.
See **COMPANY**, col. 95.

PURCHASER—Agent for sale—Goods—Prize
Court.
See **PRIZE COURT**, col. 325.

— Vendor and.
See **VENDOR AND PURCHASER**.

QUALIFICATION—Lessee's covenant—Not
covenant by lessor.
See **LANDLORD AND TENANT**, col. 244.

QUARTER SESSIONS—Conviction confirmed
by.
See **JUSTICES**, col. 238.

— Highway—Diversion.
See **HIGHWAY**, col. 189.

— Right of appeal to—Poor rate—Special
sessions.
See **RATES**, col. 343.

QUAY—Cargo damaged while on.
See **SHIPPING**, col. 393.

QUEBEC.
See **CANADA** and **COMPENSATION**.

QUEENSLAND.
See **AUSTRALIA**, col. 53.

QUINQUENNIAL VALUATION—London—
Increased rateable value.
See **RATES**, col. 345.

RACING YACHT—Merchant ship—Hague
Convention.
See **PRIZE COURT**, col. 326.

RAILWAY.

Arrest. See **MASTER AND SERVANT**.

Building Contract, col. 338.

Carriage of Goods, col. 338.

Charges, col. 340.

Compensation, col. 342.

Passenger, col. 343.

Railway and Canal Commission, col.
343.

RAILWAY—continued.

Rates. See above, **Charges**.

Special Act. See **COMPENSATION**.

Arrest.

— Company—Liability for acts of servants—
Implied authority—Arrest of pas-
sengers.
See **MASTER AND SERVANT**, col. 274.

Building Contract.

*Rates—Occupation—Railway taken over by
contractor from his employers for purposes of the
contract—Contract for construction of reservoir—
Claim for extras—Absence of order in writing by
engineer—Arbitration clause.*

The taking over of a ry. and sidings, the
property of his employers, by a contractor who
has contracted to construct a reservoir is not
such an occupation of the ry. as to render the
contractor rateable. The words "take over"
are ambiguous, and in the absence of any express
provision in the contract that the contractor is
to pay the rates, or of any claim for rates by
the contractor in the bill of quantities, do not
imply a rateable occupation; nor do provisions
that he shall efficiently work the traffic, convey
goods or materials other than those used in the
performance of the contract, pay existing or
further wayleaves or charges, and be responsible
for accidents.

Where a contract for the construction of
works, such as a reservoir, contains a provision
that the employers shall not be liable to pay
for extra works, such as additions, alterations
or deviations, unless orders for the same have
been given in writing by the engineer of the
works, but the arbitration clause merely pro-
vides that the arbitrator is to decide disputes
and is silent as to the effect of his award in
the absence of an order in writing by the engi-
neer, the contractor is entitled to the full benefit
of the appeal, and if, before the arbitrator he
succeed in establishing his claim for payment
for extra work, insisted upon by the resident
engineer to the knowledge and with the approval
of the engineer of the works, but executed
without any order in writing, the award of the
arbitrator must take the place of the order in
writing of the engineer. **NOTT v. CARDIFF**
CORPORATION - - **Bray J. 15 L. G. R. 733**

— **Canada (British Columbia).**

See **CANADA**, col. 69.

Carriage of Goods.

— **Charges.**

See below, **Charges**, col. 340.

— **Milk**—Sample taken "in course of delivery."
See **ADULTERATION**, col. 5.

*Owner's risk—Consignment note—Construction
—"Non-delivery of any consignment."*

A consignment of carcasses of frozen mutton
was delivered to a ry. co. for carriage on their
ry. at a reduced rate upon the terms of a contract
signed by the owner, which provided that the
co. should be relieved from "all liability for
loss, damage, misdelivery, delay or detention,"
unless arising from the wilful misconduct of

RAILWAY (Carriage of Goods)—continued.

their servants, but not from any liability they might otherwise incur in the case of "non-delivery of any package or consignment fully and properly addressed," and that "no claim in respect of goods for loss or damage during the transit" should be allowed unless made within three days after delivery of the goods in respect of which the claim was made, or "in the case of non-delivery of any package or consignment," within fourteen days after despatch.

When the consignment arrived at its destination a few of the carcasses were missing, and the owner made a claim against the co. within fourteen days after the despatch of the consignment:—

Held (by Viscount Haldane, Lord Kinnear, and Lord Parmoor; Lord Shaw of Dunfermline dissenting), that non-delivery of a consignment meant non-delivery of the consignment as a whole, and that the claim failed. Earl Loreburn was of opinion that the question whether shortage amounted to a non-delivery of the consignment was a question of fact in each case, and that in the special circumstances of the case, and in the absence of agreement between the parties, there ought to be a new trial.

Decision of the C. A. [1915] 1 K. B. 199 reversed. *GREAT WESTERN RY. CO. v. WILLS* H. L. (E.) [1917] A. C. 148; 86 L. J. (K. B.) 641; 116 L. T. 615; [1917] W. N. 107; 33 T. L. R. 254; 61 S. J. 335

Owner's risk—Special conditions—Signature—Just and reasonable—Alternative rates—Wilful misconduct—Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), s. 7.

The plts. asked the defts. to send to their works a 5-ton wagon for machinery which they desired delivered from L. to R. A wagon of 3 tons capacity was sent, which broke down and the machinery was rendered useless. The plts. used a printed consignment form of their own, in the middle of which, after the words "goods specified below as received from," the name of their firm was printed; at the bottom, after the words "carriage paid by," their forwarding clerk wrote "J. B. & Co." and "pieces over 2 tons o.r.," and the defts.' carman signed the plts.' delivery book.

The ordinary rate charged for carriage from L. to R. was 22s. 2d. per ton, and the reduced rate for o.r. 19s. 2d. The defts. in 1903 sent out notices to traders, including, as they alleged, the plts., that though they used their own forms with o.r. put on them the defts. would only carry at o.r. on the conditions set out in their standard consignment forms enclosing copies under which they were only to be liable for wilful misconduct. The clerk who wrote in "J. B. & Co." understood the plts. by o.r. got the reduced rate, and that the defts. claimed only to be liable for wilful misconduct. On an action to render the defts. liable as common carriers:—

Held, that there was a special contract within s. 7 of the Railway and Canal Traffic Act, 1854, the printed name of the firm being under the circumstances a signature within that section, and that the terms of the conditions were that

RAILWAY (Carriage of Goods)—continued.

the defts. were only liable for wilful misconduct, which was understood by the plts.

Held, also, that those conditions were just and reasonable within s. 7 of the Act, as a fair alternative was open to the plts., who preferred to them the o.r. conditions, and none the less because all liability except for wilful misconduct was excluded as a part of such conditions.

Held, further, that, there being no will on the part of the defts.' servants to do any act which they knew to be wrong, there was no wilful misconduct, and therefore the defts. were not liable for the damage caused.

Lewis v. Great Western Ry. Co., 3 Q. B. D. 195, and *Forder v. Great Western Ry. Co.* [1905] 2 K. B. 532 applied. *JOSHUA BUCKTON & CO. v. LONDON AND NORTH WESTERN RY. CO.* Astbury J. 117 L. T. 556; 34 T. L. R. 119

Charges.

Coal traffic—Trucks sorted for conveyance to destination by company—Service not included in tonnage rate—Extra service—London and North-Western Railway Company (Rates and Charges) Order Confirmation Act, 1891 (54 & 55 Vict. c. cccxi.).

A ry. co. claimed under s. 5 of the schedule to their provisional order to have rendered to the above colliery co. at their request and for their convenience, services in relation to their coal traffic which were not covered by the tonnage rate, and for which they were therefore entitled to make an additional charge under the above-named section of their provisional order.

The service alleged to have been rendered was that of sorting a long line of loaded trucks at or in connection with the collieries' private sidings into what is termed sectional or route order for conveyance to their ultimate destination.

The colliery co. contended that this service, whether performed by the ry. co. on the collieries' sidings or off such sidings, even though constructively "in connection with it," was a service which was comprised in the conveyance rate, and was not chargeable as an extra service:—

Held, that it was the duty of the collieries to tender the traffic on the siding in a condition reasonably fit for conveyance, and that, as the traffic was not tendered in such a condition, the ry. co. was impliedly requested to do what was required to put it in such proper condition, and were entitled to make an extra charge for the services thereby rendered necessary. *LITTLETON COLLIERIES, LD. v. LONDON AND NORTH-WESTERN RY. - Ry. & Can. Com.* 115 L. T. 840

Demurrage—Consignment note—Condition—Demurrage in respect of detention of trucks—Right of ry. co. to recover—Services rendered by ry. co. within scope of their undertaking—Great Western Railway Company (Rates and Charges) Order Confirmation Act, 1891 (54 & 55 Vict. c. cccxii.), Sched., Part I., clause 5, sub-clause (iv.); Part IV.

The plts., the Great Western Ry. Co., under consignment notes signed by the defts. conveyed in trucks tinplates from the defts.' works near Swansea to various sheds upon the premises

RAILWAY (Charges)—continued.

of the Swansea Harbour Trust, the route being partly over the plts.' system and partly over the lines of the Swansea Harbour Trust. The plts. did the haulage over the harbour trust lines and charged a rate for conveyance of 2s. 8d. per ton and made a charge for the haulage services of 3d. extra. By a condition indorsed upon the consignment notes it was provided that "after the termination of the transit, goods carried or conveyed by the company will be subject in addition to the charge for carriage to further charges for demurrage of 3s." (subsequently reduced to 1s. 6d.) "per truck per day . . . no such charges shall be made if the company have not given proper opportunity for the removal of the goods or the discharge." By a circular letter notice was given by the plts. to the defts. that in the event of demurrage being incurred upon waggons loaded by the defts., or upon sheets covering the same, and detained upon the lines of the Swansea Harbour Trust at Swansea the plts. would hold the defts. responsible for the payment of such demurrage; that ry. stock upon the harbour trust lines would be treated as upon a private siding, and that the defts. would be allowed four clear days exclusive of the day of arrival before demurrage became chargeable. There was never any delay in transit while the trucks were on the plts.' system, but when they passed on to the lines of the Swansea Harbour Trust delays frequently arose, the delays being entirely beyond the control of and not caused by any default of the plts. In an action for demurrage:—

Held, that the contract between the parties was one whereby the plts. agreed to carry partly over their own system and partly over the Swansea Harbour Trust lines; that the condition in the consignment notes only referred to events happening after the termination of the transit, and therefore did not protect the defts. against the claim for demurrage which arose during the transit; and further that the condition did not refer to a detention of trucks upon the lines of the Swansea Harbour Trust.

By sub-clause (iv.) of clause 5 of Part I. of the schedule to the Great Western Railway Company (Rates and Charges) Order Confirmation Act, 1891, it is provided that the co. may charge a reasonable sum by way of addition to the tonnage rate for "The detention of trucks, or the use or occupation of any accommodation, before or after conveyance, beyond such period as shall be reasonably necessary for enabling the company to deal with the merchandise as carriers thereof, or the consignor or consignee to give or take delivery thereof"; and by Part IV. the co. might charge "For any accommodation or services provided or rendered by the company within the scope of their undertaking by the desire of a trader, and in respect of which no provisions are made by this schedule such reasonable sum as the company may think fit in each case":—

Held, that clause 5, sub-clause (iv.), of Part I. only referred to detention of trucks before or after conveyance, and therefore did not apply to the present case; but that the keeping by the plts. of the defts.' goods in their trucks until

RAILWAY (Charges)—continued.

the consignees, to whom on the defts.' order they were bound to deliver them, were ready to take them was a service provided and rendered by the co. within the scope of their undertaking by the desire of the defts., and that therefore the plts. were also entitled to recover the demurrage under Part IV. *GREAT WESTERN RY. CO. v. DAFEN TINPLATE CO.* Sankey J. [1917] 2 K. B. 177; 86 L. J. (K. B.) 785; 117 L. T. 148

Rates—Classification of goods—Description of goods—Jurisdiction of Commrs.—Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 10.

Sect. 10 of the Railway and Canal Traffic Act, 1888, gives the Railway Commrs. jurisdiction to hear and determine any question or dispute "involving the legality" of any toll, rate, or charge charged, or sought to be charged, for merchandise traffic by a ry. co. to which the Act applies:—

Held, that the jurisdiction of the Commrs. extends to a case in which, it being admitted that the schedule of charges is proper, the only question is as to the correct classification of the particular goods in respect of which the dispute arises. *WARD (THOS. W.), LD. v. MIDLAND RY. CO.* - C. A. [1917] 2 K. B. 278; 86 L. J. (K. B.) 752; 117 L. T. 1; [1917] W. N. 123; 33 T. L. R. 233

Rates—Classification of goods—Frozen fish—"Fish, fresh"—"Preserves (fish, . . .)"—Unspecified goods—Midland Railway (Rates and Charges) Order Confirmation Act, 1891 (54 & 55 Vict. c. cccix.), Sched.; Schedule of Maximum Rates and Charges, III., s. 20; Classification of Merchandise Traffic, class 2, class 4.

Imported salmon submitted abroad to a freezing process, and brought to this country in a frozen condition, is not "Fish, fresh" within the meaning of class 4, nor "Preserves (fish, . . .)" within class 2, of the Schedule of Maximum Rates and Charges and Classification of Merchandise Traffic under the Midland Railway (Rates and Charges) Order Confirmation Act, 1891, but is an article of a "description which is not specified in the classification" within Part III., s. 20, of that schedule; and the co. may therefore make the charges in respect of it which are authorized for articles in class 3. *MIDLAND RY. CO. v. WARNER, SONS & CO.*

C. A. 86 L. J. (K. B.) 1216; 116 L. T. 662

Rates—Classification of goods—Spirits of tar—Whether benzole, naphtha, and toluol included—Class 2—Part IV. of classification—Dangerous goods.

Benzole, naphtha, and toluol are not "spirits of tar" within class 2 of the statutory classification of merchandise traffic, but come under Part IV. as being dangerous goods. *TRADERS' TRAFFIC CONFERENCE (INCORPORATED) v. MIDLAND RY.* - Ry. & Can. Com. 34 T. L. R. 141

— Rates and tolls—False account of goods—

Intent to avoid payment.

See CRIMINAL LAW, col. 127.

Compensation.

See CANADA, col. 73, and COMPENSATION, col. 101.

RAILWAY—*continued.***Passenger.**

See CANADA, cols. 70, 71, and MASTER AND SERVANT, col. 274.

Railway and Canal Commission.

Proceeding before—Costs—Board of Trade (Arbitrations) Act, 1874 (37 & 38 Vict. c. 40)—Railway and Canal Traffic Act, 1894 (57 & 58 Vict. c. 54), s. 2.

A case which comes before the Ry. and Can. Com. under the Board of Trade (Arbitrations) Act, 1874, whether it has been referred to the Commission by the Board of Trade or through any other means, is a "proceeding" within s. 2 of the Railway and Canal Traffic Act, 1894, and therefore, where the case is not a dispute between ry. cos., that section prevents the Commission from having power in such a case to award costs unless they are of opinion that either the claim or the defence has been frivolous and vexatious. *CHESHIRE LINES COMMITTEE v. BUTLER & Co.* Ry. & Can. Com. 33 T. L. R. 565

Rates.

See above, Charges, col. 340.

Special Act.

— Deposited plans—Incorporation in special Act.

See COMPENSATION, col. 101.

RAILWAY COMMISSIONERS—Jurisdiction.

See RAILWAY, col. 342.

RATEABLE VALUE.

See RATES.

RATES.

Appeal, col. 343.

Building Contract. See RAILWAY.

Distress, col. 344.

Exclusive Occupation, col. 344.

General District Rate, col. 345.

"Houses," col. 345.

London, col. 345.

Non-payment, col. 347.

Railway. See RAILWAY.

Rateable Value, col. 347.

Appeal.

Special sessions—Appellant partly successful—Right of appeal to quarter sessions—Rateable value—Gross estimated rental—Evidence—Admissibility—Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), ss. 6, 7.

The appellants, the owners of certain premises, appealed to special sessions against the amount of the gross estimated rental and of the rateable value at which their premises had been assessed for the poor rate. The special sessions reduced the amount of the gross estimated rental and of the rateable value, but in neither case to so low a figure as had been contended for by the appellants. The appellants gave notice of

RATES (Appeal)—*continued.*

appeal to quarter sessions on the ground that both amounts as determined by the special sessions were too high. Before the hearing of the appeal at quarter sessions the appellants withdrew their appeal so far as it related to the gross estimated rental. At the hearing the respondents, who had not given notice of appeal against the decision of the special sessions, tendered evidence to prove that the true amount of the gross estimated rental was in excess of the figure arrived at by the special sessions, but the evidence was rejected:—

Held, that although the decision of the special sessions was partly in favour of the appellants they were entitled, as persons "impugning" the decision within the meaning of s. 6 of the Parochial Assessments Act, 1836, to appeal to quarter sessions; and that as the respondents had not appealed against the decision of the special sessions the evidence tendered by them at quarter sessions had been rightly rejected.

Horton & Son v. Walsall Assessment Committee [1898] 2 Q. B. 237 and *Hendon Paper Works Co. v. Sunderland Assessment Committee* [1915] 1 K. B. 763 followed. *FOWLER (JOHN) & Co. (LEEDS) v. HUNSLLET ASSESSMENT COMMITTEE* - Div. Ct. [1917] 1 K. B. 720; 86 L. J. (K. B.) 816; 15 L. G. R. 211; 116 L. T. 562; [1917] W. N. 68; 81 J. P. 118; 33 T. L. R. 209

Building Contract.

— Liability of contractor.

See RAILWAY, col. 338.

Distress.

See below, Exclusive Occupation, col. 344, and General District Rate, col. 345.

Exclusive Occupation.

Poor rate—Distress—Theatre—Reservation by landlord of refreshment rooms, &c.—Liability of tenant for whole rate—Hereditaments capable of being separately rated.

A theatre was demised to a tenant under an agreement with the exception of the refreshment-rooms, bars, cloak-rooms, and wine-cellar, which, by the agreement, were to remain the property of the landlord. The landlord had access to the portions reserved at all times when the outer doors of the theatre were open quite independently of the tenant, but he could not reach them without passing through one of the entrances to the theatre. The theatre was opened and closed at the unfettered discretion of the tenant. The tenant had no right to enter the parts reserved to the landlord, nor did he exercise any control over them. The refreshment-rooms, bars, cloak-rooms, and cellars were capable of being separately occupied and assessed from the remainder of the theatre premises. A distress warrant was served upon the tenant for the rates in respect of the whole of the theatre premises:—

Held, that the tenant was not in exclusive occupation of the whole of the theatre premises, and that therefore he was not liable for the rates.

RATES (Exclusive Occupation)—continued.

in respect of the whole of the theatre premises, and the distress warrant had been wrongly issued. *CURZON v. WESTMINSTER CORPORATION* Div. Ct. 86 L. J. (K. B.) 198; 14 L. G. R. 1112; 115 L. T. 823; 80 J. P. 468

General District Rate.

Summons for non-payment of rate—How service of summons to be effected—Public Health Act, 1875, ss. 256, 267—Summary Jurisdiction Act, 1848, s. 1.

A summons for non-payment of a general district rate is an "other document" within the meaning of the Public Health Act, 1875, s. 267, and may be served in accordance with the provisions of that section and need not be served in accordance with the provisions of the Summary Jurisdiction Act, 1848, s. 1. *REX v. BRAITHWAITE* - Div. Ct. [1917] W. N. 313

"Houses,"

Aeroplane hangar—X. Sea Defence Order, 1913, art. 18.

By a Provisional Order, confirmed by Act of Parliament, Commrs. were appointed to execute works for preventing inroads of the sea, and they were authorized to levy on the owners of certain properties a rate for defraying the expenses of carrying out the works. By art. 18 of the Order the amount of the rate in the case of "houses, shops and farm buildings" was not to exceed 3s. 4d. in the pound, whereas the rate on land was not to exceed 10s. in the pound.

The appellants were the owners of aeroplane hangars situated within the rateable area. The hangars were permanent structures for housing aeroplanes and could be used for the construction and repair of aeroplanes. They contained no lavatories or sleeping accommodation:—

Held, that the hangars were "houses" within the meaning of art. 18 of the Provisional Order. *B. AERODROME, LD. v. DELL* Div. Ct. [1917] 2 K. B. 380; 86 L. J. (K. B.) 1331; 15 L. G. R. 609; 117 L. T. 272; [1917] W. N. 173; 33 T. L. R. 375; 81 J. P. 205

London.

Quinquennial valuation—Increased rateable value—Notice sent by post but not received—"Deemed to have been served and received"—Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), ss. 9, 65.

By s. 9, sub-s. 1, of the Valuation (Metropolis) Act, 1869, where the overseers of a parish raise the gross or rateable value of a hereditament above the value stated in the valuation list for the time being in force they shall at the time prescribed serve on the occupier of the hereditaments a notice of the gross and rateable value inserted in the valuation list.

By s. 65 all notices may be served and sent by post by a prepaid letter addressed to the person affected, and if sent by post shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service or sending it shall be sufficient to prove that the letter con-

RATES (London)—continued.

taining the notice was properly addressed and prepaid and put into the post:—

Held by Viscount Reading C.J. and Lush J., that delivery to the post office of a letter containing a notice properly addressed and prepaid as directed by s. 65 raises a presumption that the notice has been received by the addressee; that this is not merely a presumption of fact until the contrary is shown, but is a presumption of law which cannot be rebutted by showing that in fact the notice had not been received.

Held by Ridley J., that s. 65 provides a statutory method of giving notice, and that when a notice has been sent as directed it is not necessary to show that the addressee has received it.

The overseers of a parish raised the rateable value of a hereditament in the parish. They posted a notice prepaid and properly addressed to the occupiers of the hereditament, who, however, never received it. The occupiers having obtained a rule nisi for a mandamus to the assessment committee to hear their objection to the assessment on the ground that the overseers had not served upon them any notice of increase in the value of the hereditament:—

Held, that the occupiers must be taken to have received the notice and that the rule nisi must be discharged. *REX v. WESTMINSTER UNIONS ASSESSMENT COMMITTEE. Ex parte WOODWARD & SONS* - Div. Ct. [1917] 1 K. B. 832; 86 L. J. (K. B.) 698; 15 L. G. R. 199; 116 L. T. 601; [1917] W. N. 28; 81 J. P. 93

Quinquennial valuation—Reduction in rateable value—Provisional list showing value unaltered—Duty of assessment committee to strike out entry—Provisional list made in last year of quinquennial period—"As altered on appeal"—Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 47, sub-s. 10—Practice—Mandamus—Order absolute—Time for appealing—R. S. C., 1883, O. LVIII., r. 15—O. LXXI., r. 1—Crown Office Rules, 1906, r. 206—Judicature Act, 1873 (36 & 37 Vict. c. 36), s. 100.

Under s. 47 of the Valuation (Metropolis) Act, 1869, it is a condition precedent to the retention by the assessment committee of a hereditament in a provisional list that the hereditament should have been increased or reduced in value in the course of the year, and if in a provisional list as presented to the assessment committee for their adjudication a hereditament is entered as being of the same value as that at which it stood in the valuation list then in force and the assessment committee come to the conclusion that there has been no such increase or reduction in value, they are bound to strike it out, notwithstanding that by so doing they will, in the event of its being assessed at a lower value on the revision of the valuation list, deprive the occupier of the benefit of the rebate provided for by s. 47, sub-s. 10, which enacts that "if when the next revision of the valuation list takes place the list as approved and altered on appeal contains a smaller value for the hereditament comprised in a provisional list than the value stated in such provisional list, the amount of rate or tax which has been overpaid in consequence of the larger value

RATES (London)—*continued.*

having been stated shall be repaid or allowed."

Semble that the words "as approved and altered on appeal" in that sub-section are to be read as meaning "as approved or altered on appeal," and that if in the course of the last year of the quinquennial period specified in the Act a hereditament is assessed in a provisional list at a different value from that at which it stood in the valuation list then in force, and subsequently on the making of a new valuation list the assessment committee reduce the value to a figure with which the occupier is satisfied, he is entitled to the rebate provided by the sub-section notwithstanding that he does not appeal to the quarter sessions against the assessment committee's decision.

An application for a prerogative writ of mandamus is a civil proceeding commenced otherwise than by writ in manner prescribed by rules of Court, and is consequently an action within the definition of that word in s. 100 of the Judicature Act, 1873. Therefore an order making absolute a rule nisi for a mandamus is appealable at any time within six weeks from its date.

In re Fawcitt (1885) 30 Ch. D. 231 applied. **REX v. WESTMINSTER ASSESSMENT COMMITTEE.** *Ex parte* LONDON AND PROVINCIAL VICTUALERS, LD. **REX v. ISLINGTON ASSESSMENT COMMITTEE.** *Ex parte* ROYAL AGRICULTURAL HALL CO. C. A. [1917] 2 K. B. 215; 86 L. J. (K. B.) 1161; 15 L. G. R. 362; 116 L. T. 641; [1917] W. N. 98; 81 J. P. 221; 61 S. J. 299

Non-payment.

See above, **Exclusive Occupation**, col. 344, and **General District Rate**, col. 345.

Railway.

See **RAILWAY**, col. 342.

Rateable Value.

See above, **Appeal**, col. 343, and **London**, col. 345.

RATIFICATION—Carrier—Theft by servant — Prosecution by carrier — Action against carrier.
See **CARRIER**, col. 78.

REAL ESTATE—Contract for sale of — Damages for loss of bargain.
See **VENDOR AND PURCHASER**, col. 451.

— Conversion.

See **CONVERSION**, col. 113, and **LUNATIC**, col. 269.

— Sale of—Second lunacy—Persons entitled to proceeds of sale.
See **LUNATIC**, col. 269.

— Settlement—No words of limitation—Equitable estates in fee simple.
See **SETTLEMENT**, col. 388.

REAL PROPERTY LIMITATION ACTS.

See **LIMITATIONS (STATUTES OF)**, col. 254.

REALTY—Charge on—Annuity.

See **ANNUITY**, col. 21.

REASONABLE APPREHENSION—Restraints of princes.

See **SHIPPING**, col. 407.

REASONABLE TIME—Notice—Underwriters.
See **INSURANCE (MARINE)**, col. 207.

RECEIPT—Property tax.

See **LANDLORD AND TENANT**, col. 243.

RECEIVER—Affidavit of fitness—Description of deponent — "Director of public companies."

See **COMPANY**, col. 88.

— County Court.

See **COUNTY COURT**, col. 119.

— Probate action—Administration.

See **PROBATE**, col. 333.

RECEIVING ORDER.

See **BANKRUPTCY**, col. 62.

RECITAL—Separation deed—Effect of.

See **POWER OF APPOINTMENT**, col. 309.

RECONVERSION.

See **CONVERSION**, col. 114.

RECORDED AGREEMENT—Workmen's compensation.

See **WORKMEN'S COMPENSATION**, col. 502.

RECTIFICATION—Contract—Mistake.

See **CONTRACT**, col. 111.

— Disentailing deed—Mistake—Jurisdiction.

See **TAIL, TENANT IN**, col. 429.

— Register—Shares—Company.

See **COMPANY**, col. 96.

REDEMPTION—Compensation.

See **WORKMEN'S COMPENSATION**, col. 508.

— Land tax.

See **REVENUE**, col. 361.

REDUCTION—Capital—Company.

See **COMPANY**, col. 87.

RE-ENTRY BY LANDLORD — Option to tenant to purchase reversion.

See **CONVERSION**, col. 115.

REGISTER—Members—Company.

See **COMPANY**, col. 90.

REGISTRAR—Admiralty—Service—Summons.

See **SHIPPING**, col. 392.

— Marriage by licence before.

See **DIVORCE**, col. 146.

— Notes—Bankruptcy.

See **BANKRUPTCY**, col. 58.

REGISTRATION—Bill of sale.

See **BILL OF SALE**, col. 66.

— Company.

See **COMPANY**, col. 95.

REGISTRATION—*continued.*

- Deed of arrangement.
See **BANKRUPTCY**, col. 59.
- Shares—Company—Transfer.
See **COMPANY**, col. 96.
- Title.
See **STRAITS SETTLEMENTS**, col. 427.
- Trade mark.
See **TRADE MARK**, col. 433

REGULAR MINISTERS—Religious denomi-
nation—Army—Exemption.
See **ARMY**, col. 34.

REIMBURSEMENT—Action in rem for.
See **SHIPPING**, col. 415.

REJECTION—Military service.
See **ARMY**, col. 39.

— Proof—Bankruptcy.
See **BANKRUPTCY**, col. 62.

RELEASE—Power of appointment.
See **POWER OF APPOINTMENT**, col. 309.

— Restraint on anticipation.
See **MARRIED WOMAN**, col. 271.

REM—Action in.
See **SHIPPING**, col. 415.

REMAINDER—Cargo—Sale of.
See **SALE OF GOODS**, col. 372.

— Will.
See **WILL**, col. 477.

REMAINDERMAN—Settled land—Powers.
See **SETTLED LAND**, col. 384.

— Tenant for life.
See **CAPITAL OR INCOME**, col. 77.

— Time for determining rights of.
See **CONVERSION**, col. 113.

REMITTED ACTION — Costs — Jurisdiction
— Judge.
See **COUNTY COURT**, col. 120.

REMUNERATION — Person concerned in
management of business — Excess
profits duty.
See **COMMISSION**, col. 83, and **REVENUE**,
col. 355.

RENEWAL—Licence.
See **LICENSING ACTS**, col. 252.

RENT—Acceptance of—Waiver—Forfeiture.
See **LANDLORD AND TENANT**, col. 248.

— Deduction of landlord's property tax.
See **LANDLORD AND TENANT**, col. 244.

— Increase.
See **EMERGENCY LEGISLATION**, col. 171.

— Payment of.
See **LANDLORD AND TENANT**, col. 243.

— Tithe rent-charge.
See **LIMITATIONS, STATUTES OF**, col. 251.

REOPENING TRANSACTION — Money-lender.
See **BANKRUPTCY**, col. 62.

REORGANIZATION OF CAPITAL—Company
See **COMPANY**, col. 87.

REPAIR—Covenant.
See **LANDLORD AND TENANT**, col. 247.

— Farm—Fences—Straying horses.
See **TRESPASS**, col. 442.

— Hired chattel—Contract.
See **LIEN**, col. 253.

"REPEAT" ORDERS.
See **COMMISSION**, col. 311.

REPRESENTATION—Credit.
See **BANK**, col. 55.

— Order.
See **ALIEN ENEMY**, col. 16.

REPRISALS ORDER IN COUNCIL OF MAR. 11,
1915.
See **PRIZE COURT**, col. 328

REQUETE CIVILE.
See **CANADA (Quebec)**, col. 76.

REQUISITION—Vessel.
See **SHIPPING**, col. 404.

REQUISITIONING ORDER — Prize Court —
Special leave to appeal.
See **PRIZE COURT**, col. 331.

RES JUDICATA — Company — Debentures —
Validity.
See **COMPANY**, col. 89.

— Parties—Two defendants—Default judgment
against one—Whether a bar to judg-
ment against the other.
See **PARTIES**, col. 296.

RESALE—Sale of goods—Buyer in possession.
See **SALE OF GOODS**, col. 366.

RESCISSION—Contract.
See **CONTRACT**, col. 111, **PRINCIPAL AND**
AGENT, col. 314, **SOLICITOR**, col. 423,
and **VENDOR AND PURCHASER**, col.
450.

— Contract—Mistake.
See **CONTRACT**, col. 111.

— Order—Bankruptcy.
See **BANKRUPTCY**, col. 64.

— Separation deed.
See **HUSBAND AND WIFE**, col. 193.

RESERVATION — Water—Right—Reservation
of "all waters and watercourses in or
adjoining the demised premises."
See **EASEMENT**, col. 150.

RESERVOIR—Construction of—Plant—Power
of Minister of Munitions to order
sale of.
See **CONTRACT**, col. 108.

RESETTLEMENT — Disentailing deed — Mis-
take—Rectification of disentailing deed
— Jurisdiction.
See **TAIL, TENANT IN**, col. 429

RESIDENCE—Place of—Income tax—Profits arising from foreign possession—Place of assessment.

See **REVENUE**, col. 358.

— Poor law — Settlement — Irremovability — Child under sixteen.

See **POOR LAW**, col. 306.

RESIDUARY ESTATE.

See **REVENUE**, col. 354, and **WILL**, col. 458.

RESIDUE.

See **WILL**, col. 457.

RESOLUTION — Company — Agreement — Adoption — Defective notices of meeting.

See **COMPANY**, col. 97.

RESTITUTIO IN INTEGRUM.

See **HUSBAND AND WIFE**, col. 193, and **PRINCIPAL AND AGENT**, col. 314.

RESTITUTION OF CONJUGAL RIGHTS—Divorce.

See **DIVORCE**, col. 147.

RESTRAINT OF PRINCES.

See **SHIPPING**, col. 407.

RESTRAINT OF TRADE—Co-operative creamery society registered under the Industrial and Provident Societies Act, 1893—Rules—Member bound to supply all the milk of all his cows—Prohibition of competition—Public policy—Breach of contract—Damages.

Rules of a co-operative creamery society registered under the Industrial and Provident Societies Act, 1893 (the shares being transferable only with the consent of the committee of the society), bound the members not to sell the milk of their cows, produced within a certain defined area, "to any creamery other than a creamery of the society, or to any company, society, person, or persons who sell milk or manufacture butter for sale" :—

Held by the C. A. (Ir.), affirming the decision of the K. B. D., not to amount to an illegal restraint of trade, nor to create such a monopoly as to offend against public policy.

As a general rule, parties to a commercial agreement are free to enter into a combination to carry on a trade or business together for their own interest, provided such a course of action is undertaken without a view to injure others; and the law regards the parties as the best judges of what is reasonable as between themselves.

Agreements regulating the relations of parties inter se, while members of a trading association or partnership, or during a contract of service, and imposing a restraint on individual trading, must be differentiated from restrictive covenants in the case of such persons after they have ceased to be members of the association or partnership, or have left the employment.

Judgment of Holmes L.J. in *Tipperary Co-operative Creamery Society v. Hanley* [1912] 2 I. R. 586 commented on. **COOLMOYNE AND FETTERED CO-OPERATIVE CREAMERY, LD. v. BULFIN** - C. A. (Ir.) [1917] 2 I. R. 107

RESTRAINT OF TRADE—continued.

— Personal freedom.

See **CONTRACT**, col. 107.

Trade combination to control prices—Agreement to restrict output, to sell only to certain persons, and on terms and at prices to be fixed by the combination—Agreement unlimited in point of time—Reasonableness as between parties.

The plts. were manufacturers of "cased tubes," and were members of a trade combination called the Cased Tube Association, and the defts., who were also manufacturers of cased tubes, consisted of all the other members of the association. The object of the association was the regulation of prices in the trade, and in furtherance of that object it was provided by the rules that each member should be restricted in his output of cased tubes to a certain fixed percentage of the total output of the members, the percentage being based on the members' actual output in preceding years. Each member whose output in any month exceeded his percentage was required to pay the profits of such excess into a "pool," while each member whose output in any month was less than his percentage was entitled to receive a certain sum out of the pool. The rules provided that the members should sell their cased tubes only upon the terms and at the prices which should from time to time be fixed by the association. No means was provided by which a person who had once joined the association could terminate his membership. By an agreement made between the plts., the defts., and certain firms, the plts., in consideration of the defts. fixing their percentage at a certain figure, agreed not to sell their cased tubes to any persons other than the said firms. The agreement provided that it should continue in force as long as the association and a certain other society, over whom the plts. had no authority, continued to control prices. For several months the plts.' output was less than their percentage, and they became entitled to receive from the association sums of money out of the pool, and the secretary of the association furnished them each month with an account showing how much they were entitled to for that month. In an action brought to recover the money so due :—

Held, that the restraint of trade imposed by the agreement and the rules was unreasonable as between the parties and consequently illegal; and that the plts. could not recover the money claim either upon the agreement and the rules, or upon the accounts stated by the association's secretary. **EVANS & Co. v. HEATHCOTE**

Low J. [1917] 2 K. B. 336; 86 L. J. (K. B.) 1524; 117 L. T. 288; [1917] W. N. 184

RESTRAINT ON ANTICIPATION.

See **DIVORCE**, col. 142, and **MARRIED WOMAN**, col. 271.

RETROSPECTIVE OPERATION—Statute.

See **CONVERSION**, col. 114, and **REVENUE**, col. 358.

REVENUE.

Death Duties. See **WILL**.

Entertainments Duty, col. 353.

REVENUE—continued.

Estate Duty, col. 353.

Excess Mineral Rights Duty, col. 355.

Excess Profits Duty, col. 355.

Income Tax—

Annuity, col. 357.

Cemetery Company. See below,
Deduction.

Computation of Profits. See
AUSTRALIA.

Deduction, col. 357.

Foreign Possessions, col. 358.

Place of Assessment. See above,
Foreign Possessions.

Profits, col. 361.

Prohibition. See above, *Foreign Possessions*.

Super-Tax. See above, *Foreign Possessions*.

Increment Value Duty, col. 361.

Land Tax, col. 361.

Mineral Rights Duty, col. 362.

Reversion Duty, col. 362.

Super-Tax. See above, *Income Tax*.

Undeveloped Land Duty, col. 363.

Death Duties.

See *WILL*, col. 465.

Entertainments Duty.

Payments for admission to entertainment—
philanthropic or charitable purposes—Masonic
festival consisting of dinner and concert—Ex-
penses paid by stewards—Finance (New Duties)
Act, 1916 (6 Geo. 5, c. 11), s. 1, sub-s. 1, 4, 5, 6.

ATT.-GEN. v. McLEOD - *Roche J.*
15 L. G. R. 881; 117 L. T. 631; [1917]
W. N. 327; 34 T. L. R. 29;
62 S. J. 105

Estate Duty.

Incidence—Property not passing to executor
as such—Charge of duty—Beneficial interests—
Rateability of charge—Finance Act, 1894 (57 &
58 Vict. c. 30), s. 9, sub-s. 1.

Public Trustee—Costs of distribution—With-
drawal fee—Incidence—Public Trustee Act, 1906
(6 Edw. 7, c. 55), s. 9, sub-s. 1, 2—Public Trustee
(Fees) Order, 1912, Sched., Div. I., Head A,
clause 2.

The estate duty charged by the Finance Act,
1894, s. 9, sub-s. 1, on property that does not
pass to the executor as such—e.g., a trust fund
passing, in default of appointment, to the
pecuniary and residuary legatees of another will
—must be borne rateably by the beneficiaries
of that property.

Judgments in *Berry v. Gaukroger* [1903]
2 Ch. 116 explained and applied.

The costs and expenses of and incidental to
(a) the payment of that rateable estate duty,
(b) the payment of legacy duty on the pecuniary
legacies, and (c) the final distribution of such a

REVENUE (Estate Duty)—continued.

trust fund, are ordinary costs of distribution
and must be borne by the residuary legatees of
that fund.

The withdrawal fee payable to the Public
Trustee on a final distribution of such a trust
fund is a trust expense incurred in making that
final distribution and must be borne by the
residuary legatees of the fund. *In re HICKLIN.*
PUBLIC TRUSTEE v. HOARE - *Astbury J.*
[1917] 2 Ch. 278; 86 L. J. (Ch.) 740;
117 L. T. 403; [1917] W. N. 216;
33 T. L. R. 478; 61 S. J. 630

Property passing on death—Benefit accruing
from cesser of interest—Cesser of annuity payable
out of residuary estate—Finance Act, 1894 (57 &
58 Vict. c. 30), ss. 1, 2, sub-s. 1 (b); s. 7, sub-
s. 7 (b).

By s. 1 of the Finance Act, 1894, "In the case
of every person dying" estate duty shall "be
levied . . . upon the principal value . . .
of all property . . . which passes on the death
of such person . . ."

By s. 2, sub-s. 1, "Property passing on the
death of the deceased shall be deemed to in-
clude . . . (b) Property in which the deceased
. . . had an interest ceasing on the death of
the deceased, to the extent to which a benefit
accrues or arises by the cesser of such interest
. . ."

By s. 7, sub-s. 7, "The value of the benefit
accruing or arising from the cesser of an interest
ceasing on the death of the deceased shall . . .
(b) if the interest extended to less than the
whole income of the property, be the principal
value of an addition to the property equal to the
income to which the interest extended."

By his will a testator bequeathed an annuity
of 1000*l.* per annum to be paid out of his resi-
duary estate, and primarily out of the income
thereof, during the life of the annuitant or such
less period as in the will mentioned:—

Held, that the annuitant had an interest in
the testator's residuary estate within the mean-
ing of the above sections, and that upon the
annuitant's death estate duty became payable
in respect of the benefit which accrued to the
residuary estate upon the death of the annuitant
by the cesser of the annuity. *ATT.-GEN. v.*
WATSON - *Lush J.* [1917] 2 K. B. 427;
86 L. J. (Ch.) 1034; 117 L. T. 187;
[1917] W. N. 185

Timber—Proceeds of sale—Incidence of duty
—Tenant for life and remainderman—Finance
(1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 61,
sub-s. 5—Finance Act, 1912 (2 & 3 Geo. 5, c. 8),
s. 9—Finance Act, 1894 (57 & 58 Vict. c. 30),
s. 9.

Sect. 61, sub-s. 5, of the Finance (1909-10)
Act, 1910, as amended by s. 9 of the Finance
Act, 1912, relating to the estate duty on timber,
is to be construed in the light of s. 9 of the
Finance Act, 1894, which throws the liability
for estate duty in respect of property not passing
to the executor as such ultimately on the persons
taking the benefit of such property. And as,
under the Act of 1912, the duty attaches on the
net moneys received from the sale of timber,
a tenant for life not impeachable for waste, who

REVENUE (Estate Duty)—continued.

receives the proceeds of timber sold apart from the land, has to bear the duty thereon, and such duty is not, since the recent Acts, as prior thereto it was, a charge on the full value of the land, including the value of the timber.

Quære, whether the general expression used in both of the sections of the Acts of 1910 and 1912, "the owners or trustees of such land," may not include a tenant for life who has power to sell the timber and keep the proceeds. *In re SMYTH. EDWARDS v. SMYTH* - Sargant J.

[1917] 2 Ch. 331; 117 L. T. 218

Affirmed on appeal. C. A. [1917] W. N. 332

Excess Mineral Rights Duty.

Pre-war rent value—"Average prices governing payment of rent"—*Finance (No. 2) Act, 1915 (5 & 6 Geo. 5, c. 89), s. 43, sub-ss. 1, 2.*

By s. 43 of the *Finance (No. 2) Act, 1915*, where rent varies as the price of minerals and exceeds the pre-war standard of that rent there shall be paid by the person to whom the rent is payable an amount equal to half the excess. The pre-war standard is the average of two pre-war rent values. The pre-war rent value for either of those years is "the sum to which the rent for the accounting year would amount if the rent, so far as variable according to price, were based on the average prices governing the payment of the rent in that year."

By the terms of a lease the lessee was to pay a certain royalty per ton when the average selling price of coal did not exceed 6s. 6d. per ton. When the average selling price exceeded 6s. 6d. per ton the royalty was to be increased by one-tenth of the excess. On Apr. 14, 1914, before the commencement of the war, the parties agreed to raise the basis of the average selling price from 6s. 6d. to 7s. 6d. per ton:—

Held, that the basis of 6s. 6d. per ton fixed by the lease was one of "the average prices governing the payment of the rent" in the pre-war years, and that the pre-war rent values must be arrived at by ascertaining what the tonnage raised in the accounting year would have yielded by way of royalties in the pre-war years, taking 6s. 6d., and not 7s. 6d., as the basis of the average selling price in those years. *INLAND REV. COMMS. v. EARL OF LONSDALE'S SETTLED ESTATES TRUSTEES* - Lush J.

[1917] 2 K. B. 760; 86 L. J. (K. B.) 1492; 117 L. T. 475

Excess Profits Duty.

See COMMISSION, col. 83, and COMPANY, col. 95.

Computation of profits—Remuneration of manager depending on profits—Discretion of Comms.—Finance (No. 2) Act, 1915 (5 & 6 Geo. 5, c. 89), Sched. IV., Part I., par. 5.

By Part I., par. 5, of Sched. IV. of the *Finance (No. 2) Act, 1915*, which deals with the computation of profits for the purposes of excess profits duty, "Any deduction allowed for the remuneration of directors, managers, and persons concerned in the management of the trade or business shall not, unless the Commissioners of Inland Revenue, owing to any special circumstances or to the fact that the remuneration of

REVENUE (Excess Profits Duty)—continued.

any managers or managing directors depends on the profits of the trade or business, otherwise direct, exceed the sums allowed for those purposes in the last pre-war trade year or a proportionate part thereof as the case requires":—

Held, that proof of the fact that the remuneration of the managers of the business depends on the profits does not render it obligatory on the Comms. to allow the whole of such remuneration to be deducted, but leaves it to their discretion to say whether the deduction of any and what portion of the amount by which such remuneration exceeds that of the last pre-war trade year shall be allowed. *REX v. INLAND REV. COMMS.* - Div. Ct. [1917] 2 K. B. 405; 86 L. J. (K. B.) 1280; 117 L. T. 244; [1917] W. N. 195; 33 T. L. R. 393; 61 S. J. 492

Affirmed on appeal. C. A. [1917] W. N. 364; 34 T. L. R. 118; 62 S. J. 120

Exemption of business of "husbandry"—Registered co-operative dairy society—Liability to excess profits duty—Finance (No. 2) Act, 1915 (5 & 6 Geo. 5, c. 89), ss. 38, 39, 45; Sched. IV., Part III., s. 10.

A co-operative society, registered under 56 & 57 Vict. c. 39, carrying on under its rules the manufacture and sale of butter in the interest of its members, who supplied milk for the purpose, is not carrying on the business of husbandry so as to be exempt under s. 39 of the *Finance (No. 2) Act, 1915 (5 & 6 Geo. 5, c. 89)*, from duty for excess profits, imposed by s. 38 of that Act. *In re CAVAN CENTRAL CO-OPERATIVE AGRICULTURAL AND DAIRY SOCIETY, LD.* Div. Ct. [1917] 2 I. R. 594

Remuneration of person concerned in management of business—Declaration as to future rights—Finance (No. 2) Act, 1915 (5 & 6 Geo. 5, c. 89), ss. 38, 39, 40; Sched. IV., Part I., clause 5—Finance Act, 1916 (6 & 7 Geo. 5, c. 24), s. 49.

Prior to Jul. 19, 1916 (when the *Finance Act, 1916*, received the Royal assent), the deft. had been employed by the plts. in a business in which excess profits were made which were taxable under the *Finance (No. 2) Act, 1915*. The deft., though not a partner, and acting as a market clerk, had a larger position than the other market clerks of the plts.' firm, inasmuch as he was allowed to sign cheques, attend the meetings of and advise the partners, and personally conduct matters of importance. His remuneration was a sum equal to a share of the profits and of the same amount as the share of each of the junior partners. Part of his share was earned at periods to which both the Acts applied, and the surveyor of taxes refused to allow the plts. to deduct from the excess profits on which duty had to be paid the increase in the deft.'s remuneration. An appeal had been lodged against this decision, and the plts. had not paid the duty, but were willing that the appeal should be prosecuted in their name by the deft. on his indemnifying them:—

Held—(1.) that it was in the discretion of the Court to decide, and proper for it to decide, the question whether, on paying the duty, the plts. were entitled to recover from the deft.,

REVENUE (Excess Profits Duty)—continued.

under s. 49, sub-s. 2, of the Act of 1916, the amount paid by them as excess profits duty in respect of the increase in the deft.'s remuneration; (2.) that sub-s. 2 of s. 49 was not limited to the case governed by sub-s. 1; (3.) that the lastly mentioned amount could be recovered from a person who was a "manager" or "a person concerned in the management of the trade or business" who was "remunerated out of the funds of the trade or business," within the meaning of sub-s. 3 of s. 49; and (4.) that the deft. was so concerned and remunerated.

THOMPSON BROS. & Co. v. AMIS - Sargant J. [1917] 2 Ch. 211; 86 L. J. (Ch.) 647; 116 L. T. 719; [1917] W. N. 155; 33 T. L. R. 323; 61 S. J. 491

Sale of business—Purchase-money payable by instalments—Net profits—Deduction.

See **EXCESS PROFITS DUTY**, col. 176.

Income Tax.*Annuity.*

"Annual sum"—Sum payable every calendar month—*Income Tax Act*, 1853 (16 & 17 Vict. c. 34), ss. 1, 2, 40.

In re COOPER. **COOPER v. COOPER**
Sargant J. [1917] W. N. 385

Cemetery Company.

See below, **Deduction**, col. 358.

Computation of Profits.

See **AUSTRALIA**, col. 54.

Deduction.

Agreement for annual payment out of net income without deduction of income tax—*Income Tax Act*, 1842 (5 & 6 Vict. c. 35), ss. 102, 103.

The plt. was formerly the wife of the deft., but the marriage was dissolved at the instance of the deft., who was given the custody of the only child of the marriage. Upon an application by the deft. for a settlement the parties agreed the terms of the order. By the settlement the plt. charged the income to which she was beneficially entitled under her father's will with the payments thereinafter mentioned, and directed the trustees of the will during the joint lives of the plt. and the deft. and the child, and whilst the latter should be under the age of twenty-one years, to pay to the deft. an annual sum equal to one fourth of her annual net income (after income tax on the whole income had been paid), or if one fourth part of the said annual net income should be less than 2500*l.* (which event happened), then the clear annual sum of 2500*l.* (without deducting income tax therefrom) out of such annual net income, for the maintenance of himself and the child. Income tax on the whole of the income to which the plt. was entitled under her father's will had been deducted at the source or paid by the trustees of the will.

The plt. claimed that the provision for payment of the clear annual sum of 2500*l.* to the deft. without deduction of income tax was void under ss. 102 and 103 of the *Income Tax Act*,

REVENUE (Income Tax)—continued.

1842, and that she was entitled to deduct income tax therefrom:—

Held, that the settlement took effect according to its terms and was not affected by ss. 102 and 103.

Decision of the C. A. [1916] 2 Ch. 345 affirmed. **BROOKE v. PRICE** - H. L. (E.) [1917] A. C. 115; 86 L. J. (Ch.) 329; 116 L. T. 452; [1917] W. N. 71; 61 S. J. 334

Annual value of business premises situated abroad—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 100—*Income Tax Act*, 1853 (16 & 17 Vict. c. 34), s. 2—*Finance Act*, 1898 (61 & 62 Vict. c. 10), s. 9.

For the purpose of an assessment to income tax, Sched. D, in respect of the profits of a business for a year anterior to the passing of the *Finance Act*, 1914, the taxpayer is entitled to deduct the annual value of premises which are situated abroad and are exclusively used by him for the purposes of the business.

Decision of Atkin J. [1916] 2 K. B. 560 affirmed. **STEVENS v. E. BOUSTEAD & Co.**

C. A. [1917] W. N. 382; 34 T. L. R. 143; 62 S. J. 211

Cemetery company—Lump sums for maintaining in perpetuity graves and monuments—Deduction of capital value of expenditure incurred—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 60; *Sched. (A.), No. III.*

The appellants were a commercial and dividend-paying co. owning and occupying two cemeteries of which they were the freeholders. They undertook in perpetuity the repair of grave and monuments, and the decoration of graves, upon payment of lump sums of money:—

Held, that in calculating the balance of profits upon which the appellants were liable to be assessed to income tax under No. III. of Sched. (A.), s. 60, of the *Income Tax Act*, 1842, there ought to be set against the lump sums not merely the sums annually expended by the appellants in the maintenance, repair, and decoration of the graves and monuments, but the capitalized value of the whole of the expenditure that the appellants might be estimated to incur in discharging the obligations in perpetuity in respect of which the lump sums had been paid.

LONDON CEMETERY Co. v. BARNES - Lush J. [1917] 2 K. B. 496; 86 L. J. (K. B.) 990; 15 L. G. R. 543; 117 L. T. 151; [1917] W. N. 186

Foreign Possessions.

Profits arising from—Place of assessment—Jurisdiction of Commissioners at place of residence—Retrospective effect of legislation—"Charge" to income tax—Assessment of additional Commissioners—Confirmation by General Commissioners—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 108—*Taxes Management Act*, 1880 (43 & 44 Vict. c. 19), s. 82—*Finance (No. 2) Act*, 1915 (5 & 6 Geo. 5, c. 89), s. 32.

By s. 32 of the *Finance (No. 2) Act*, 1915, which came into force on Dec. 23, 1915, it is enacted that, "(1.) Notwithstanding anything in section one hundred and six or one hundred

REVENUE (Income Tax)—continued.

and forty-six of the Income Tax Act, 1842, or in any other enactment relating to income tax, a person may be charged to income tax under Schedule D or E, . . . by commissioners acting for any parish or place in which that person ordinarily resides; and if any person has been so charged before the commencement of this Act, the charge shall not be deemed invalid by reason of that person not having been charged by the right commissioners. (2.) Section one hundred and eight of the Income Tax Act, 1842, (which makes provision as to the place at which persons are to be assessed to income tax in respect of profits or gains arising from foreign and colonial possessions or securities) is hereby repealed."

On Mar. 30, 1915, an additional assessment to income tax was made upon S. by the additional Commrs. for the district in which he resided in respect of dividends received by him in England from an American co. Notice of the assessment was given to S. on Oct. 19, 1915, and on Oct. 26 he obtained a rule nisi to prohibit the General Commrs. for the district from proceeding upon the assessment on the ground that by s. 108 of the Income Tax Act, 1842, the assessment could only be made by the Commrs. for Bristol, that being the nearest of the four places mentioned in s. 108 to the place where S. resided. Cause was shown against the rule on Jan. 13, 1916:—

Held, (1.) (affirming the decision of the Div. Ct. [1916] 2 K. B. 249), that sub-s. 1 of s. 32 of the Finance (No. 2) Act, 1915, applied to the case of an assessment made under s. 108; that the retrospective effect of the section extended to proceedings for a prohibition commenced before the Act came into force; and that the charge to income tax, if effectively created, must be deemed to have been made by the right Commrs.;

But *held*, (2.) (reversing the decision of the Div. Ct.), that, inasmuch as the assessment made upon S. by the additional Commrs. had not been allowed or confirmed by the General Commrs., he had not been effectively "charged" to income tax within s. 32, sub-s. 1, and the retrospective effect of the section had not therefore been brought into operation.

Held, therefore, that the rule nisi for a prohibition must be made absolute. *REX v. SOUTHAMPTON INCOME TAX COMMRs. Ex parte W. M. SINGER*. C. A. [1917] 1 K. B. 259; 86 L. J. (K. B.) 66; 115 L. T. 693; [1916] W. N. 374; 33 T. L. R. 45; 61 S. J. 70

Profits arising from—Place of assessment—Jurisdiction of Commissioners at place of residence—Retrospective effect of legislation—Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 106—Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 82—Finance (No. 2) Act, 1915 (5 & 6 Geo. 5, c. 89), s. 32—Practice—Rule nisi—Prohibition—Misleading affidavit—Summary discharge of rule—Inherent power in Court.

If on the argument showing cause against a rule nisi the Court comes to the conclusion that the rule was granted upon an affidavit which was not candid and did not fairly state the facts, but stated them in such a way as to mislead and

REVENUE (Income Tax)—continued.

deceive the Court, there is power inherent in the Court, in order to protect itself and prevent an abuse of its process, to discharge the rule nisi and refuse to proceed further with the examination of the merits.

In Apr., 1916, the General Commrs. for the Purposes of the Income Tax Acts for the district of Kensington made an additional assessment upon the applicant for the year ending Apr. 5, 1913, in respect of profits arising from foreign possessions. On May 16, 1916, the applicant obtained a rule nisi directed to the Commrs. calling upon them to show cause why a writ of prohibition should not be awarded to prohibit them from proceeding upon the assessment upon the ground that the applicant was not a subject of the King nor resident within the United Kingdom and had not been in the United Kingdom, except for temporary purposes, nor with any view or intent of establishing her residence therein, nor for a period equal to six months in any one year. In the affidavit on which the rule was obtained the applicant stated that she was a French subject and resident in France and was not and had not been a subject of the United Kingdom nor a resident in the United Kingdom; that during the year ending Apr. 5, 1913, she was in the United Kingdom for temporary purposes on visits for sixty-eight days; that she spent about twenty of those days in London at her brother's house, 213, King's Road, Chelsea, generally in company with other guests of her brother; that she was also in the United Kingdom during the year ending Apr. 5, 1914, for temporary purposes on visits, and spent part of the time at 213, King's Road aforesaid; and that since the month of Nov., 1914, she had not been in the United Kingdom. From the affidavits filed on behalf of the Commrs. and of the surveyor of taxes, who showed cause against the rule nisi, and from the affidavit of the applicant in reply, it appeared that in Feb., 1909, a leasehold house, 213, King's Road, Chelsea, had been taken in the name of the applicant's brother. The purchase-money for the lease of the house and the furniture amounted to 4000*l.*, and this was paid by the applicant out of her own money. The accounts of household expenses were paid by the brother and subsequently adjusted between him and the applicant.

The Div. Ct., without dealing with the merits of the case, discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her application. On appeal:—

Held, that the rule of the Court requiring uberrima fides on the part of an applicant for an ex parte injunction applied equally to the case of an application for a rule nisi for a writ of prohibition.

Held, therefore (affirming the decision of the Div. Ct.), that, there having been a suppression of material facts by the applicant in her affidavit, the Court would refuse a writ of prohibition without going into the merits of the case.

Dalglisk v. Jarvie (1850) 2 Mac. & G. 231, *The Hagen* [1908] P. 189, 201, and *Republic of Peru v. Dreyfus Brothers & Co.* (1886) 55 L. T. 802, 803, followed and applied,

REVENUE (Income Tax)—continued.

Held, also, by the C. A., that, assuming but without deciding that the applicant was at any time ordinarily residing in Kensington, the Kensington Commrs. had jurisdiction in 1916 by virtue of s. 32 of the Finance (No. 2) Act, 1915, which repealed s. 108 of the Income Tax Act, 1842, to assess her to income tax on profits arising from foreign possessions under s. 106 of that Act for the financial year 1912-13. *REX v. KENSINGTON INCOME TAX COMMSRS. Ex parte PRINCESS EDMOND DE POLIGNAC* - C. A.

[1917] 1 K. B. 486; 86 L. J. (K. B.) 257;
116 L. T. 186; 33 T. L. R. 113;
61 S. J. 182

Super-tax—Non-resident—Property in United Kingdom—Chargeability—Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), ss. 66, 72.

Super-tax is payable on income derived from property in the United Kingdom even though during the year in respect of which the assessment has been made the person charged was not resident in the United Kingdom.

Decision of Atkin J. [1917] 1 K. B. 61 affirmed. *BROOKE v. INLAND REV. COMMSRS.*

C. A. [1917] W. N. 382; 34 T. L. R. 142;
62 S. J. 191

Place of Assessment.

See above, *Foreign Possessions*, col. 358.

Profits.

— Cemetery company.

See above, *Deduction*, col. 358.

— South Australia—Company—Taxation.

See *AUSTRALIA*, col. 54.

Prohibition.

See above, *Foreign Possessions*, col. 359.

Super-Tax.

See above, *Foreign Possessions*, col. 359.

Increment Value Duty.

— Excess mineral rights duty.

See above, *Excess Mineral Rights Duty*, col. 355.

Owner of land—Transfer of land prior to assessment of provisional valuation—Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), ss. 1, 2, 4, 26, 27, 41.

It is no answer to a claim for increment value duty arising on the occasion of a transfer on sale of an interest in land in pursuance of a contract made after the commencement of the Finance Act, 1910, that no provisional valuation of the land had been made by the Commrs. of Inland Revenue prior to, or at the date of, the sale. In such a case it is the duty of the Commrs., under s. 27 of the Act, to serve notice of the provisional valuation on the owner of the land as defined by s. 41 of the Act; not on the transferor, although the duty is assessable on the latter. *ATT.-GEN. FOR IRELAND v. ADAMS* - C. A. (Ir.)

[1917] 2 I. R. 268

Land Tax.

¶ *Parish quota fixed at amount above that authorized by law—Excessive levy of tax—Duty of Commissioners to apply surplus in redemption of*

REVENUE (Land Tax)—continued.

tax—Land Tax Assessments Act, 1825 (6 Geo. 4, c. 32), s. 1—Revenue (No. 2) Act, 1861 (24 & 25 Vict. c. 91), s. 40—Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 114, sub-s. 9.

By s. 114, sub-s. 9, of the Taxes Management Act, 1880 (re-enacting s. 40 of the Revenue Act, 1861, thereby repealed), the Commrs. of Land Tax are directed to apply any excess or surplus moneys received by them in respect of land tax in the redemption of the land tax chargeable on the parish in which the excess has arisen:—

Held, that the surplus to which such directions relate is to be understood as limited to a surplus arising from the causes specified in the preamble to s. 1 of 6 Geo. 4, c. 32, namely, from the occasional necessity of making the total of the assessments in the parish exceed the authorized quota by reason of the uncertainty as to the occupation of houses and the changes in the size and number of the buildings occupied, and other similar causes, and not as including a surplus arising from the parish quota itself being fixed at an amount not authorized by law. *YORKSHIRE (E. RIDING) LAND TAX COMMSRS. v. EARL OF LONDENBOROUGH* - Atkin J.

[1917] 1 K. B. 531; 86 L. J. (K. B.) 1273;
116 L. T. 699

Mineral Rights Duty.

Brine—Duty on rental value of right to work—Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 20.

By s. 20 of the Finance (1909-10) Act, 1910, "there shall be charged . . . on the rental value of all rights to work minerals . . . a duty (in this Act referred to as a mineral rights duty) . . ."

The defts. owned land on and in which were two vertical shafts used by them for the purpose of pumping to the surface natural brine, i.e., water which had become fully saturated with salt in solution. The brine so pumped up was put by the defts. to commercial use. It was impossible to ascertain whence the brine had come or where its saturation had taken place, but as there were no surface subsidences within the defts.' land the inference was that the brine did not come from and had not been saturated within the boundaries of the defts.' land:—

Held, that the brine was a "mineral" within the meaning of the section, and that the mineral rights duty was therefore payable by the defts. on the rental value of the right so to work the brine. *ATT.-GEN. v. SALT UNION, LD.*

Lush J. [1917] 2 K. B. 488; 86 L. J. (K. B.)
1026; 117 L. T. 140; [1917] W. N. 185;
33 T. L. R. 365

Reversion Duty.

Surrender of lease—Value of land at grant of lease—Principle of valuation—Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), s. 13, sub-s. 2.

The appellants, who were owners of freehold property, made an agreement with a firm of builders to grant them a lease for eighty years when the builders had pulled down the existing buildings and had expended a certain sum in the erection of new ones. The work was done at an expenditure which was agreed at 1050L.,

REVENUE (Reversion Duty)—*continued.*

and the lease was granted in Dec., 1907, the rent being 10l. for the first year and 40l. a year afterwards. In Feb., 1913, the lease was surrendered to the appellants as from Dec., 1912, and the Inland Revenue Commrs., in assessing the amount of the reversion duty, reckoned the total value of the land at the time of the original grant of the lease (which, by s. 13, sub-s. 2, of the Finance (1909-10) Act, 1910, is "to be ascertained on the basis of the rent reserved and payments made in consideration of the lease") at the capitalized rent plus the present value of the lessees' expenditure as at the date of the grant of the lease. The appellants appealed to the referee under the Act, and contended that the whole of the lessees' expenditure ought to be added to the capitalized rent. The referee affirmed the decision of the Inland Revenue Commrs.:—

Held, on a case cited, that the Commrs. and the referee had adopted the correct principle of valuation. **ECCLESIASTICAL COMMRS. FOR ENGLAND v. INLAND REV. COMMRS.** - Lush J.
117 L. T. 253; 33 T. L. R. 411

Super-Tax.

See above, **Income Tax**, col. 358.

Undeveloped Land Duty.

Land purchased for brickworks—Erection of buildings—Portion of land held in reserve for brick-earth—Temporary use for agricultural purposes—Land "used bona fide for any business"—**Finance (1909-10) Act, 1910** (10 *Edw.* 7, c. 8), s. 16.

Sect. 16, sub-s. 2, of the Finance (1909-10) Act, 1910, provides that land shall be deemed to be "undeveloped land" if it has not been developed by the erection of dwelling-houses or of buildings for the purposes of any business, trade, or industry other than agriculture (but including glasshouses or greenhouses), or is not otherwise used bona fide for any business, trade, or industry other than agriculture. Land comprising ninety-three acres was purchased between 1896 and 1899 for the purpose of brickworks. The purchaser erected buildings for that purpose on a portion of the land comprising forty-nine acres. The remainder of the land was let on agreements for short terms in three plots as arable land and nursery gardens. Brickmaking was carried on in the buildings and on the forty-nine acres, but in order to obtain a proper return for the capital expended on the buildings it was found that it would be necessary to continue working the brickyard for thirty years, and that the brick-earth in the three plots, which were temporarily let for agricultural purposes, would be required and was necessary as a reserve for the successful working of the undertaking:—

Held, affirming the decision of Atkin J. [1916] 2 K. B. 553, that the three plots had not been "developed" by the erection of the buildings; that they were not "otherwise used bona fide for any business, trade, or industry other than agriculture"; and, therefore, that they were subject to assessment to undeveloped land duty.

REVENUE (Undeveloped Land Duty)—*contd.*

Principles laid down in *Inland Rev. Commrs. v. Duke of Devonshire* [1914] 2 K. B. 627 and in *Brake v. Inland Rev. Commrs.* [1915] 1 K. B. 731 applied, **FERGUSON v. INLAND REV. COMMRS.** - C. A. [1917] 1 K. B. 193; 86 L. J. (K. B.) 154; 115 L. T. 873; [1916] W. N. 395; 33 T. L. R. 81; 61 S. J. 98

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See **LANDLORD AND TENANT**, col. 249

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Illegality, col. 377.

Installments, col. 377.

Passing of Property. See above, *Appropriation.*

Payment. See above, *Installments.*

Performance, col. 377.

Principal and Agent. See **PRINCIPAL AND AGENT**.

"Remainder of Cargo." See above, *Delivery.*

Rescission, col. 378.

Sold Note, col. 378.

Suspension, col. 378

Termination. See above, *Suspension.*

Waiver. See above, *Installments.*

War. See above, *Suspension.*

Warranty, col. 381.

Written Contract, col. 381.

Contract.

Agreement to Buy.

Conditional agreement—Buyer in possession—Sale to third person—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 25, sub-s. 2.

The plt. and one Thacker entered into an agreement in writing by which Thacker agreed to sell and the plt. to buy a plot of land for the sum of 385*l.*, "subject to purchaser's solicitor's approval of title and restrictions"; and in consideration of the above transaction the plt. agreed to sell and Thacker agreed to buy a motor car for the sum of 300*l.*, "completion of such sale and purchase to be carried out simultaneously with above transaction." Shortly afterwards the plt. gave possession of the motor car to Thacker "on loan," none of the purchase-money for it having been paid, and Thacker sold it to the deft., who bought in good faith and without notice of any right of the plt. in respect thereof. Subsequently the plt.'s solicitors refused to approve of the restrictions in connection with the land. In an action to recover possession of the car:—

Held, assuming that the two parts of the document were dependent on each other, that the agreement as to the land did not confer a mere option on the plt. to buy, but was an agreement by him to buy conditional upon his solicitors approving of the restrictions; that consequently the agreement as to the sale of the motor car to Thacker was conditional; that a conditional agreement came within s. 25, sub-s. 2, of the Sale of Goods Act, 1893; and that therefore Thacker had "agreed to buy" the car within the meaning of the section, and the deft. had acquired a good title thereto.

SALE OF GOODS (Contract)—continued.

Judgment of Rowlatt J. [1917] 1 K. B. 544 affirmed. *MARTEN v. WHALE* - C. A. [1917] 2 K. B. 480; 86 L. J. (K. B.) 1305; 117 L. T. 137; [1917] W. N. 152; 33 T. L. R. 330

*Appropriation.**Passing of property.*

The plt., a fish exporter carrying on business at Valentia, Ireland, entered into a contract with the defts., fish salesmen, of Billingsgate, to sell to them twenty boxes of hard, bright mackerel. The fish were to be sent to the defts. at Billingsgate. On the same day the plt. consigned by ry. from Valentia to his (the plt.'s) order in Holyhead 190 boxes of mackerel, and telegraphed instructions to the ry. co. at Holyhead to deliver twenty boxes of the 190 boxes to the defts., and of the remaining 170 boxes twenty and 150 to two other consignees respectively. After the mackerel were placed on rail at Valentia the plt. sent to the defts. by post an invoice on which he placed the words "At sole risk of purchaser after putting fish on rail here." The train in which the mackerel were carried from Valentia to Dublin was delayed, and arrived at Dublin so late that the mackerel lost the boat by which they ought to have been carried from Dublin to Holyhead. Upon arrival of the 190 boxes at Holyhead an official of the ry. co., in accordance with the plt.'s telegraphic instructions, picked out and earmarked twenty boxes for delivery to the defts. and twenty and 150 boxes for delivery to the two other consignees respectively. In consequence of the delay which had occurred, when the mackerel reached the defts. in London they were not in a merchantable condition as hard, bright mackerel, and the defts. refused to accept them. In an action brought by the plt. to recover the price:—

Held, that as the invoice was not sent by the plt. until after the contract of sale was complete and the fish were put on rail, it was not part of the contract, and therefore did not operate so as to place the fish at the risk of the defts.

Held, further, that, as there had been no appropriation of the twenty boxes to the defts. at Valentia, the delivery there to the ry. co. of the 190 boxes did not pass the property in any particular twenty boxes to the defts., and that they were not bound by the selection and earmarking made at Holyhead after the delay had occurred; consequently the defts. were entitled to reject the mackerel, and the plt. could not recover the price from them.

Stock v. Inglis (1882) 9 Q. B. D. 708; (1884) 12 Q. B. D. 564; (1885) 10 App. Cas. 263, commented upon and distinguished. *HEALY v. HOWLETT & SONS* - Div. Ct. [1917] 1 K. B. 337; 86 L. J. (K. B.) 252; 116 L. T. 591

Cancellation.

See below, *Installments*, col. 377.

C.i.f.

Non-delivery—Time for measuring damages—Arrival of shipping documents—Arrival of goods—Time or times when they ought to be delivered.—*Sale of Goods Act, 1893* (56 & 57 Vict. c. 71), s. 51, sub-s. 3.

SALE OF GOODS (Contract)—continued.

By s. 51, sub-s. 1, of the Sale of Goods Act, 1893, where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery. By sub-s. 3, where there is an available market for the goods in question the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price at the time or times when they ought to have been delivered.

Merchants in Japan sold goods to be shipped in Jun. at a price including cost, freight, and insurance to London. Shipping documents, including the bill of lading and policy of insurance, relating to the last possible shipment in Jun. would, if sent forward with reasonable dispatch, have reached London on Jul. 21; the goods themselves would have arrived on Aug. 30. The goods were not shipped. In an action by the buyers for non-delivery:—

Held, that the delivery intended by the contract was a constructive delivery by tender of the shipping documents as soon as possible after shipment, and that there was a breach of contract on Jul. 21.

Held, also, that the damages were to be measured by the difference between the contract price and the market price on Jul. 21, as that date, and not Aug. 30, was the time when the goods ought to have been delivered within the meaning of s. 51, sub-s. 3, of the Act.

Held, further, it being impossible to buy similar goods coming forward on a Jun. shipment but possible to buy such goods on the spot, that a merchant in the circumstances acting reasonably would have bought goods on the spot, and that the price of such goods should be regarded in measuring the damages. *C. SHARPE & Co. v. NOSAWA & Co.* - Atkin J. [1917] 2 K. B. 814; 22 Com. Cas. 286

Condition or Warranty.

See *CONTRACT*, col. 111.

Conveyance.

Particular route—Printed form of contract—Terms of contract—Evidence of usage as to alternative route—Admissibility of—Inconsistent with contract.

By a contract dated Mar. 27, 1916, in the printed form of contract for cost, freight, and insurance issued by the Rubber Trade Association of London, Apr., 1913, with the necessary additions thereto written in, the appellants agreed to sell to the respondents twenty-five tons of plantation rubber, c.i.f., "to be shipped during the months of March/April, 1916, by vessel or vessels (steam or motor) from the East to New York direct and/or indirect, with liberty to call and/or tranship at other ports"; any question regarding quality to be settled by arbitration, which was to be demanded and held within a certain time "after the arrival of the vessel"; samples to be taken in the presence of representatives of buyers and sellers and "failing sellers naming their representatives on or before arrival of vessel," the buyers' samples to be accepted; and payment to be by "cash against documents

SALE OF GOODS (Contract)—continued.

on London on or (at buyers' option) before arrival of vessel or vessels at port of discharge."

The sellers made a declaration under the contract of fifteen tons as having been shipped per steamship via Seattle under a through bill of lading, which stated that the goods were shipped at Singapore for New York via Seattle (a port on the Pacific coast of the United States, whence they would be sent by rail to New York). The buyers objected to this declaration as irregular, upon the ground that the rubber was to be conveyed by sea to New York. The dispute was referred to arbitration under a clause in the contract, and the arbitrators found that after the outbreak of war great difficulty was experienced in obtaining space for shipments from the East, and in consequence in Oct., 1915, shipments to the eastern States of the United States, which had before gone the whole distance to New York by water, began to be made by steamer to a port on the western seaboard of the United States, whence they were transmitted by rail to destination; that at the date of the contract this route from the East by sea and rail from the Pacific seaboard was well known to those engaged in the trade as one of the usual routes for rubber sold on contracts in the form of the one in question; that there was, at the date of the contract, such a course of business established as would make it within the contemplation of the parties that the rubber might come by this route; and that goods forwarded by such a route would be a good tender under the contract. They accordingly awarded that the tender was good, and that the buyers were bound to accept the same:—

Held by Swinfen Eady L.J. and Bray J., Scrutton L.J. dissenting, that the contract provided for a sea carriage from the port of loading to New York; that the usage (assuming it was a usage) found by the arbitrators was inconsistent with the terms of the contract, and therefore was not applicable thereto; and that the tender was not a good tender and the buyers were not bound to accept the same.

Judgment of Lush J. [1917] W. N. 5 affirmed.
In re AN ARBITRATION BETWEEN L. SUTRO & CO. AND HEILBUT, SYMONS & CO. - - C. A. [1917] 2 K. B. 348; 86 L. J. (K. B.) 1226; 116 L. T. 545; [1917] W. N. 170; 23 Com. Cas. 21; 33 T. L. R. 359

Course of Business.

— Written contract to send goods by sea—Goods sent partly by land—Evidence of usage
 — Inconsistent with contract—Admissibility.

See above, Conveyance, col. 368.

Custom.

— Delivery as required—Reasonable time.

See below, Delivery, col. 371.

Inconsistency with written contract.

By a contract dated May 30, 1912, the Produce Brokers Co. agreed to sell and deliver to the Olympia Oil and Cake Co. 6000 tons of Soya beans to be shipped from an Eastern port to Hull. In fulfilment of this contract the sellers

SALE OF GOODS (Contract)—continued.

on Feb. 4, 1913, declared and appropriated a cargo of beans shipped at Vladivostok on a ship called the *Canterbury* by the East Asiatic Co. This cargo had on Feb. 4 been tendered to and accepted by the sellers under a contract in similar terms by which the East Asiatic Co. had sold to them the same quantity of Soya beans. On Feb. 3 the *Canterbury* had in fact met with disaster near Vladivostok, and on Feb. 4 she sank with her cargo. The fact of the loss became known to the sellers on Feb. 4 in the interval between the receipt by them of the tender from the East Asiatic Co. and the handing of that tender to the buyers. On an arbitration between the parties, it was found by the Board of Appeal of the Incorporated Oil Seed Association that by the custom of the trade, in case of resales, buyers under this form of contract were bound to accept the original shipper's appropriation, if passed on without delay, provided that the original shipper's appropriation was valid and in order at the time of being made by the original shipper to his buyers; and that their sellers would be under no obligation to make any appropriation other than that of passing on a copy of original shipper's appropriation without delay, even though the said appropriation at the time of being passed on might, apart from such custom, be invalid and not in order. It was further found that the appropriation in question by the sellers was made under a resale to which the custom applied, and that the appropriation of the original shippers, the East Asiatic Co., was valid and in order. The arbitrators awarded that the buyers were bound to accept the sellers' appropriation, although at the time it was made the cargo was at the bottom of the sea. On motion by the buyers to set aside the award the Div. Ct. *held* that the custom was neither unreasonable nor inconsistent with the contract, and dismissed the motion:—

Held by the C. A., before whom it was not contended that the custom was unreasonable, that it was not inconsistent with the contract, and that the award must consequently stand.

Decision of the Div. Ct. [1916] 2 K. B. 296 affirmed. *PRODUCE BROKERS CO. v. OLYMPIA OIL AND CAKE CO.* - - C. A. [1917] 1 K. B. 320; 86 L. J. (K. B.) 421; 116 L. T. 1; [1916] W. N. 403; 33 T. L. R. 95

Inconsistent express provision—Applicability.

Held, that an alleged custom in the iron trade that defective castings might be returned by the purchaser to the founder, and that in such a case the purchaser had no claim against the founder except to have them replaced by sound castings or to receive credit for their cost price, could not apply to a contract which expressly provided that the purchaser relied upon the founder's inspection of the castings and would use them on receiving them, and that the responsibility must rest on the founder. *VICKERY'S PATENTS, LD. v. H. & J. HILL*

Low J. 33 T. L. R. 536

Jewellery trade—Goods sold to retailer on approval—Whether at risk of retailer.

Held, that on the evidence the plts. had failed to prove that in the jewellery trade there is

SALE OF GOODS (Contract)—continued.

a custom whereby goods supplied to a retailer on approbation or on sale or return are at the risk of the person to whom they are delivered.
BLANCKENSEN (S.) & SON, LD. v. SAQUI
Darling J. 33 T. L. R. 246

Damages.

See above, *C.i.f.*, col. 367.

Delivery.

As required—Reasonable time for delivery—Custom—Foreign goods—Option to purchaser to select grades—Contract dependent on vendor's contract with foreign producer—Country of origin of goods becoming enemy territory—Trading with enemy—Vendor's contract with producers made illegal—Illegality of performance of contract sued on—Reasonable time for completion—Repudiation by vendor.

In a contract in writing for the sale and delivery "as required" of goods of which the vendor is not producer, and which are known to both parties to be the spin of particular mills, where the purchaser has the choice of numerous varieties of the contract goods, a trade custom that delivery need not be made until a reasonable time to enable the vendor to obtain the goods from the particular mills has elapsed from the receipt of the purchaser's specification is not an unreasonable custom; nor is such a custom repugnant to or inconsistent with the written terms of such a contract, being explanatory of what is the reasonable time for delivery.

Such a contract must be read as incorporating the custom, and as made expressly in relation to the place of origin of the goods, and therefore as implying that the vendor can legally obtain the goods from the particular mill when the purchaser delivers to him his specification therefor. In this respect, where the vendor is not the manufacturer, the contract for sale and delivery is related to and dependent upon the vendor's contracts with the producers, and the legal possibility of the performance of such latter contracts.

Where a contract for the sale and delivery of foreign goods is made between a British vendor and a British purchaser, and during its continuance the country where the goods are manufactured becomes enemy territory, by hostile occupation, trading with persons in which is forbidden to British subjects by the laws of the realm, the vendor (if he has not the goods in his possession) may legally refuse to deliver on the ground that to obtain the specified goods is not then legally possible.

Where a contract for sale and delivery "as required" of goods is silent as to time, the law will imply that the specification requiring delivery must be made within a reasonable time after the contract; also, that the contract must be completed within a reasonable time after specification, and such reasonable time for delivery may be explained and controlled by a trade custom or usage.

Where a reasonable time for the completion of the contract has elapsed, and the country where the goods are produced is enemy territory, trading with persons in which is illegal, the

SALE OF GOODS (Contract)—continued.

vendor may repudiate the contract without being obliged to offer delivery of the goods to the purchaser.

Jones v. Gibbons, 10 Ex. 920, considered and distinguished. **ROSS BROS., LD. v. SHAW & CO. Div. Ct. (Ir.) [1917] 2 I. R. 367**

— Delivery *f.o.b.*—Whether buyer entitled to claim delivery without shipment.
 See below, *F.o.b.*, col. 375.

Estimated weight—"Estimated 8/10 tons"—Maximum and minimum quantity.

Appeal from the judgment of Ridley J. at the trial of the action without a jury ([1917] W. N. 130).

The action was brought to recover damages for breach of contract for the sale by the deft. to the plts. of Australian basils (sheep skins dressed in a particular manner). The contract was contained in a note addressed by the deft. to the plts., which stated: "I beg to confirm having this day sold you the undermentioned goods on ex warehouse Kidderminster . . . Quantity salvaged Australian basils estimated 8/10 tons, at per lb. 13½d." The basils had been salvaged from a ship which had been torpedoed. They were sold by auction at Mincing Lane in their wet state, and the deft. purchased a quantity of them. He afterwards sold some of them to other persons, and the rest were sent to his warehouse at Kidderminster. As they dried they lost weight. The contract of sale to the plts. was then made. The correspondence showed that the parties were dealing with the balance of the basils at Kidderminster. The basils delivered to the plts. weighed 6 tons 3 cwt. 2 qrs., being the whole of the basils which the deft. had left. The plts. claimed damages for short delivery. Ridley J. held that by the contract the deft. had undertaken to deliver a minimum of eight tons, and he gave judgment for the plts., the amount of damages being agreed. The deft. appealed.

The C. A. allowed the appeal. **TEBBITT BROS. v. SMITH** . C. A. [1917] W. N. 241; 33 T. L. R. 508

"Ex store Bristol, duty paid"—Subsequent increase of duty—Liability of purchaser to pay duty—Delivery of goods "as required during January"—No requirement for delivery during January—Partial delivery subsequently—Finance Act, 1901 (1 Edw. 7, c. 7), s. 10.

CORN PRODUCTS CO. v. FRY (J. S.) & SONS, LD. . . . Bray J. [1917] W. N. 224

— Non-delivery—Damages—"Time or times when they ought to be delivered."
 See above, *C.i.f.*, col. 367.

Remainder of cargo "more or less about" specified quantity.

Buyers verbally agreed with a seller to purchase the remainder of a cargo of wheat ex *Clodmore* which the seller estimated at 5400 quarters. At the time of the verbal agreement the buyers stipulated that they should have the whole of the remainder of the cargo. On the same day the seller sent to the buyers a contract in writing by which he sold to the buyers "the remainder" of the cargo "(more or less about)

SALE OF GOODS (Contract)—continued.

5400 quarters Manitoba wheat . . . at Hull ex *Clodmore*." The buyers accepted delivery of about 5400 quarters. The seller had in fact made a miscalculation, and at the time of the sale he had 574 quarters more than 5400 quarters in hand. Rules and conditions were indorsed on the written contract, of which condition 3 was as follows: "The word 'about' when used in reference to quantity shall mean within 5 per cent. over or under the quantity stated." The buyers contended that, having regard to the condition, the most they could be compelled to accept was 5400 quarters plus 270 quarters, i.e. plus 5 per cent. on the 5400 quarters:—

Held, that the words "more or less about 5400 quarters" were merely words of estimate; that the subject-matter of the contract was a sale of the whole of the remainder of the cargo, the governing word being "remainder"; and that the buyers must accept the remainder, although it amounted to more than 5400 quarters with a margin of 5 per cent.

Levi v. Berk (1886) 2 T. L. R. 898 and *Borrowman v. Drayton* (1876) 2 Ex. D. 15 followed. *In re HARRISON AND MICKS, LAMBERT & Co.* - Div. Ct. [1917] 1 K. B. 755; 86 L. J. (K. B.) 573; 22 Com. Cas. 273; 116 L. T. 606; [1917] W. N. 91; 33 T. L. R. 221

Dissolution.

Enemy country—Agreement for purchase of goods to be obtained in—Outbreak of war—Suspensory clause—No application—Illegality of contract.

On May 2, 1914, the plts., a co. registered in England, contracted to sell to the defts., also a co. registered in England, steel wire rods which were to be obtained, to the knowledge of the defts., in Germany. In consequence of the outbreak of war between England and Germany the contract had only been partially performed. The contract provided that it was to be subject to the general conditions of sale of the continental works as to "unforeseen hindrances preventing execution in due course." One of these conditions provided "In case of force majeure as . . . war . . . which may partially or wholly interfere with the delivery same may be partially or wholly suspended. . . ." The plt. co. had been ordered to be wound up under the Trading with the Enemy Amendment Act, 1916:—

Held, that the proviso and condition were inapplicable to the event of war between England and Germany, and that the further execution of the contract was illegal, and that it had been determined. *VEITHARDT & HALL, LD. v. RYLANDS BROTHERS, LD.* - C. A. 86 L. J. (K. B.) 604; 116 L. T. 706

Enemy subject—Contracts with—Suspension or dissolution of contract—Terms of contract—Unavoidable cause—Commercial intercourse—Arbitration clause.

A co. was formed in 1873 by four firms in the iron and steel trade, of which two were British, one Spanish, and one K. of German nationality. The objects of the co. were to adopt two contracts for the acquisition of

SALE OF GOODS (Contract)—continued.

certain iron ore, mines, and railways near Bilbao, in Spain. The capital of the co. was subscribed by the four firms equally; and by the articles of association it was provided that they should be equally represented on the board of directors, and that contracts should be entered into by the co. with each of the promoting firms for the supply to them respectively of iron ore. These contracts were identical in form, except as to the amount of ore to be supplied. By the contract with K. dated Aug. 15, 1873, it was provided that K. should take an annual minimum amount of 75,000 tons of ore and an annual maximum amount of 200,000 tons of ore at a price to be fixed as therein mentioned, and that in the event of the co. being unable to supply sufficient ore the four contracting firms should abate in their supply proportionately. By clause 15 it was provided that if "by reason of war or civil disturbance" the co. should be hindered in raising ore and unable to supply the full amount in any year, the deficiency was to be made up in the five years succeeding the cessation of such war or civil disturbance. By clause 18 the contract (except as to that clause and clause 23 and the settlement of accounts and the payment and receipt of money due) was to be suspended during any period in which "an unavoidable cause" prevented the delivery or receipt of ore, and to revive on the cessation or removal of such cause. Clause 23 provided for arbitration in English form. K., in the five years before the war, had taken an annual amount of ore much in excess of the maximum mentioned, and had made a large profit from the contract. At the outbreak of war K. was indebted to the co. for ore delivered, the amount of which indebtedness was discharged by the Public Trustee, in whom, as custodian, the contract had been vested, out of moneys in his hands belonging to K.:—

Held, that the question whether the contract was dissolved by the outbreak of war depended upon the terms of the contract; that the "war" referred to in clause 15 was a war in which Spain was engaged; that the "unavoidable cause" in clause 18 did not refer to a war between Great Britain and Germany, as some of the excepted matters would in such a war be illegal; that there was no suspension of the contract in the event of such a war, but that the contract would involve commercial intercourse with the enemy, and was therefore dissolved upon the outbreak of war. *ORCONERA IRON ORE CO. v. FRIED KRUPP AKTIEN GESELLSCHAFT* - Younger J. 86 L. J. (Ch.) 613; 117 L. T. 564; 33 T. L. R. 570

Trading with the enemy—Avoidance—Legal Proceedings against Enemy Act, 1915 (5 Geo. 5, c. 36), s. 1, sub-s. 6.

In the first case the plts. entered into an agreement, dated Oct. 9, 1913, for the supply of cupreous sulphur ore by them to the defts., who were a German firm. The agreement provided that the ore was to be shipped from Huelva in Spain and delivered ex ship in Rotterdam, Hamburg, Stettin, and other European ports.

By clause 15: "If, owing to strikes, war, or any other cause over which the sellers have no

SALE OF GOODS (Contract)—continued.

control, they should be prevented from shipping the ore from Huelva or delivering same to the buyers, the obligation to ship and (or) deliver shall be suspended during the continuance of such impediment and for a reasonable time afterwards."

By clause 12 the buyers were to declare in writing not later than Jan. 1 of each year the total quantity of fines and lumps separately which they desired delivered during that year, and what quantity of each size was to be delivered at each port. Clause 18 provided for arbitration, and clause 19 gave the plts. certain rights in case one E. should cease to be a member of the deft. firm :—

Held, that the contract involved commercial intercourse with the enemy, and was dissolved on the outbreak of the war between this country and Germany, and the plts. were released from any obligation under the contract thereafter.

In the other cases the contracts were of a similar nature, but were made in Germany and were to be subject to German law, and they provided also that disputes under the contracts were to be settled by arbitration. The appellants contended that the plts. were not "entitled for the time being to bring an action in the High Court" within the words of s. 1, sub-s. 6, of the Legal Proceedings against Enemies Act, 1915 :—

Held, that the plts. came within the subsection and were entitled to sue; and that these contracts also were dissolved on the outbreak of the war.

Zinc Corporation, Ltd. v. Hirsch [1916] 1 K. B. 541 followed.

Decisions of Sankey J. 116 L. T. 471 and 473 affirmed. *RIO TINTO CO. v. ERMEL BIEBER UND CO. SAME v. VEREINIGTE KONIGS UND LAURARUTTE ACTIEN-GESELLSCHAFT. SAME v. DYNAMIT ACTIEN-GESELLSCHAFT*

C. A. 116 L. T. 810; 33 T. L. R. 537

Trading with the enemy—Commercial impracticability.

In May and Jul., 1914, the plts., who were merchants in London, made with the defts., who were German subjects carrying on business in Germany, contracts whereby the plts. sold to the defts. certain quantities of pyrites to be delivered f.o.b. at Huelva in Spain at various dates between Aug., 1914 and 1917, times of shipment to be mutually arranged. The contracts provided that in case of war hindering shipment or delivery the deliveries might be suspended during its continuance, shipment to be resumed as soon as practicable :—

Held, that the contracts had become commercially impracticable and were dissolved as from Aug. 4, 1914, by reason of the outbreak of war with Germany. *NAYLOR, BENZON & CO. v. ARON HIRSCH & SON* - *Bray J.* 33 T. L. R. 432

Evidence.

See above, *Conveyance*, col. 368, and *Custom*, col. 370.

F.o.b.

Delivery—Whether buyer entitled to claim delivery without shipment.

SALE OF GOODS (Contract)—continued.

In Jan., 1915, the defts., an English co., sold to the plts., an American co., a quantity of woollen tops. The contract contained the following clauses :—"This order is taken subject to the embargo being removed, and your affidavits being accepted," and "Delivery Liverpool, England." In the communications leading up to the contract the expression "f.o.b. Liverpool" had been used. There was at the time of the contract an embargo against the export of wool from the United Kingdom except under licence, and the course of business was for the defts. to obtain such licence, though they were under no obligation to do so. The defts., having failed to obtain the necessary licence, did not deliver a portion of the stipulated quantity, and the plts. brought an action against them for damages and contended that they had an option to require delivery in England in lieu of shipment :—

Held, that in the circumstances "delivery Liverpool" meant delivery f.o.b. Liverpool, and the buyers were not entitled to claim delivery at Liverpool without the goods having been put on board ship, and therefore the action failed. *MAINE SPINNING CO. v. SUTCLIFFE & CO.* - *Bailhache J.* 34 T. L. R. 154

Goods sent by sea—Risk during transit—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 32, sub-s. 3.

By s. 32, sub-s. 3, of the Sale of Goods Act, 1893, "Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their sea transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such sea transit."

The plts. sold to the defts. a quantity of nails to be delivered f.o.b. New York, for shipment to the destination specified by the defts. on receipt of shipping instructions from the defts., for cash against shipping documents. In Jun., 1916, the defts. sent an order under the contract and specified the shipping marks. On Aug. 16 the plts. gave notice to the defts. that the goods would shortly be made. The goods were shipped on a vessel which sailed from New York on Aug. 24. On Aug. 26 the shipowners notified the defts. that the ship had sailed, and by Sept. 6 the defts. knew that the goods had been shipped. On Sept. 18 the ship was torpedoed and the goods were lost. The defts. had not insured the goods. In an action for the purchase-money there was evidence that the defts. could have effected an insurance before they knew of the loss :—

Held, that the above enactment applied to a contract for the sale of goods f.o.b., but that as the defts. had sufficient knowledge of the facts to enable them to insure the plts. were entitled to recover.

Wimble v. Rosenberg [1913] 3 K. B. 743 followed. *NORTHERN STEEL AND HARDWARE CO. v. JOHN BATT & CO. (LONDON)* - C. A. 33 T. L. R. 516

SALE OF GOODS (Contract)—continued.*Illegality.*

— Contract — Export — Prohibition — Implied obligation.
See *CONTRACT*, col. 107.

— Trading with the enemy.

See above, *Delivery*, col. 371, and *Dissolution*, col. 373.

Instalments.

Sale and delivery by—Condition as to payment—Breach of condition—Waiver by seller—Right to cancel contract—Notice by seller of intention to cancel.

A contract, made in Sept., for the sale and shipment of 4000 tons of flour, to be shipped to Greece not later than Nov. 7, provided that "each shipment shall be deemed a separate contract," and that payment should be "by confirmed bankers' credit." The buyer opened a bankers' credit which was not in fact "confirmed"; and the seller, with notice of that fact, made some shipments and received payment therefor by means of the credit, and also obtained from the buyer an extension of time to Nov. 30 for shipment of the balance of the flour. On Nov. 25 the seller cancelled the contract as to the shipment of the balance of the flour, without any previous notice, upon the ground that the credit was not in accordance with the contract:—

Held, that the seller, by waiving for a time the breach of the condition as to a confirmed credit, was not thereby bound to act upon that credit up to the end of the contract, but that he was not entitled to cancel the contract without giving the buyer reasonable notice of his intention to cancel so as to give the buyer an opportunity of complying with the condition.

Decision of Bailhache J. [1917] 1 K. B. 767 affirmed. *PANOUTSOS v. RAYMOND HADLEY CORPORATION OF NEW YORK* - C. A. [1917] 2 K. B. 473; 86 L. J. (K. B.) 1325; 22 Com. Cas. 308; 117 L. T. 330; [1917] W. N. 204; 33 T. L. R. 436; 61 S. J. 590

Passing of Property.

See above, *Appropriation*, col. 367.

Payment.

See above, *Instalments*, col. 377.

*Performance.**War—Force majeure clause—Impossibility.*

The plts. made with the defts. three contracts in 1913 and Apr., 1914, by which the defts. were to supply the plts. with paper. The following clause was embodied in the contracts: "All orders are subject to strike or lock-out clauses and force majeure, fire, or breakdown." In Aug., 1914, war broke out and certain sources of supply were closed, and the defts. declined to supply paper except at increased prices, and the plts. paid the increased prices without prejudice. In Mar., 1916, regulations made by the Paper Commission restricted the quantity of paper that buyers might receive to two-thirds of that supplied to them in 1914. In an action for damages for breach of the contracts:—

SALE OF GOODS (Contract)—continued.

Held, that the war had not made the contracts impossible of performance in the commercial sense, that though the force majeure clause excused performance of a contract if such performance was prevented by the enumerated causes, yet it did not excuse performance that was merely hindered or affected thereby, and that the plts. were entitled to damages for the defts.' breaches up to the date of the regulations of the Paper Commission, but that the plts. could not recover for breaches after that date, as the regulations had made performance impossible because delivery of two-thirds was not performance of a contract to deliver the whole amount contracted for. *E. HULTON & Co., Ltd. v. CHADWICK & TAYLOR, Ltd.* - 33 T. L. R. 363

Principal and Agent.

See *PRINCIPAL AND AGENT*, col. 314.

"Remainder of Cargo."

See above, *Delivery*, col. 372.

Rescission.

Parol contract—Contract in writing—Rescission or variation—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 4.

While a parol variation of a contract required to be in writing cannot be given in evidence, parol evidence is admissible to prove a total rescission, whether through the instrumentality of an agreement which did not comply with the statutory requirements or by any other mode of mutual assent by parol.

Dictum of Sankey J. in *Williams v. Moss' Empires, Ltd.* [1915] 3 K. B. 242 overruled. *MORRIS v. BARON & Co.* - H. L. (E.) [1917] W. N. 297

*Sold Note.**Condition—Assent of buyer.*

Where a seller of goods hands to the buyer a sold note which the buyer accepts as being the contractual document, it is no part of the seller's duty to call the buyer's attention to the terms of the note, and the buyer is bound by any conditions contained in the note, although he may not have read them, or have known that the note contained any conditions, unless the conditions are printed in such a manner or are in such a position in the note as to mislead a reasonably careful business man, in which case the note must be read as if it did not contain the conditions. *ROE v. R. A. NAYLOR, Ltd.* - Div. Ct. [1917] 1 K. B. 712; 86 L. J. (K. B.) 771; 33 T. L. R. 203

Suspension.

"Contingency beyond control of seller or buyer"—War—"Preventing or hindering delivery"—Shortage of supply—Rise in price.

The defts., who had contracted to sell to the plts. their requirements of magnesium chloride over the year 1914 at the price of 63s. per ton, to be delivered in monthly instalments, failed to deliver 240 tons.

In an action for damages for breach of contract the defts. pleaded that they were entitled to suspend delivery under a condition in the

SALE OF GOODS (Contract)—continued.

contract which provided that "deliveries may be suspended pending any contingencies beyond the control of the sellers or buyers (such as . . . war . . .) causing a short supply of labour, fuel, raw material, or manufactured produce, or otherwise preventing or hindering the manufacture or delivery of the article." The greater part of the supply of magnesium chloride available for the British market came from Germany. The outbreak of war on Aug. 4, 1914, put an end to this source of supply, and caused a substantial shortage in the supply, with a consequent rise in price. The defts., having at this date a large number of running contracts for the supply of magnesium chloride, immediately gave notice suspending delivery to the several purchasers, all of whom except the plts. acquiesced in the suspension. Between Aug. and the end of the year the defts. were able at an increased price to obtain enough magnesium chloride to satisfy the plts.' contract, if they disregarded their other contracts and the normal requirements of their business, but not enough to satisfy all their contracts :—

Held (by Earl Loreburn, Viscount Haldane, Lord Dunedin, Lord Atkinson, Lord Shaw of Dunfermline, and Lord Wrenbury; Lord Finlay L.C. dissenting), that, apart from the question of price, the evidence showed a shortage in the supply of the article which hindered delivery by preventing the sellers from fulfilling their obligations to their customers in the ordinary course of their business, and that the suspension was justified.

Per Curiam: A rise in price would not in itself constitute a hindrance to delivery within the meaning of the condition.

Order of the C. A. [1917] 1 K. B. 208 reversed. *TENNANTS (LANCASHIRE), LD. v. WILSON (C. S.) & Co.* - - - H. L. (E.) [1917] A. C. 495;

86 L. J. (K. B.) 1191; 116 L. T. 780;

[1917] W. N. 211; 33 T. L. R. 454;

23 Com. Cas. 41; 61 S. J. 575

Delivery of oversea goods—Exceptions—"War"—"Restraints of princes"—Rise in freight—Vendors not prevented by war from delivering—Damages for breach of contract.

In Nov., 1914, after the outbreak of war, the defts., a Spanish co., controlled by a Spanish firm, contracted to sell to the plts., Bolekow, Vaughan & Co., Ltd., a quantity of iron ore to be delivered at Middlesbrough during 1915. The contract contained the following proviso: "In case of strikes, combinations of workmen, accidents, war, or any unavoidable total or partial stoppage of works or mines, the supply of minerals now contracted for may be wholly or partially suspended during the continuation thereof, and the time for delivery extended proportionately. In case of partial stoppage of works or mines, delivery to be pro rata with other then existing engagements." The Spanish firm then entered into a freight contract with the defts. to carry iron ore from Spain to Middlesbrough during 1915 at 5s. 9d. a ton, the contract containing an exceptions clause of "restraint of princes." After this contract freights rose rapidly, and on Dec. 1, 1914, the British Admiralty issued regulations which caused

SALE OF GOODS (Contract)—continued.

delays to shipping. The defts. delivered cargoes under their contract in Dec., 1914, and Feb., 1915. On Feb. 4, 1915, the German Government threatened to sink all British and Allied ships in the waters round Great Britain and Ireland after Feb. 18, intimating that neutral ships might unavoidably suffer; and the Spanish firm relied on this threat as a reason for claiming relief from their contract with the defts. The threat caused a rise in war insurance premiums, but did not affect freights; and no more neutral vessels were sunk in the first three months of 1915 than in the last three months of 1914. In Mar., 1915, the defts. refused to make further deliveries until after the war; and the plts. treated this as a repudiation of their contract, and sued the defts. for breach thereof :—

Held, that the words of the proviso should be read as if they were "In case of strikes, combinations of workmen, accidents, war, or any other unavoidable cause, occasioning total or partial stoppage of works or mines," and that there was no exception on which the defts. could rely as excusing them from the performance of the contract. A mere rise in the rate of freights was not alone a sufficient excuse for non-delivery, and the doctrine of "frustration of an adventure" had no application to the case.

Decision of Bailhache J. (85 L. J. (K. B.) 1776) affirmed.

In the second-named case, where the facts were very similar, the contract between the plts. and the defts., which also was made after the outbreak of the war, contained a clause providing that "In the event of a European war, restraint of princes or Governments, civil commotions, accidents, strikes, imminent hostilities, preventing the carrying out of this contract, and all other causes . . . beyond the personal control of the seller, this contract to be suspended during that period at the seller's option" :—

Held, that the defts. had not been prevented from performing their contract by restraint of princes or any other excepted peril.

Decision of Bailhache J. affirmed. *BOLCKOW, VAUGHAN & CO. v. COMPANIA MINERA DE SIERRA MENERA. NORTH-EASTERN STEEL CO. v. SAME* C. A. 86 L. J. (K. B.) 439; 115 L. T. 745;

33 T. L. R. 111

Mines affected by war—Construction.

By a contract made between the appellants and the respondents, the respondents agreed to supply the appellants with a certain quantity of iron ore of a particular quality, to be delivered by instalments as therein provided. The contract contained a clause that "In the event of war, . . . affecting the mines, . . . from . . . which the ore is intended to be worked, . . . this contract shall, at the option of the party affected, be suspended." Ore of the quality contracted for could only be obtained from certain mines in Spain. Those mines did a considerable trade with Germany, and as a result of the outbreak of the European war this trade was entirely stopped, and in consequence the mines ceased working when only a part of the ore contracted for had been delivered to the appellants, and the respondents gave notice that the contract was suspended :—

SALE OF GOODS (Contract)—continued.

Held, that the mines were "affected" by the war within the meaning of the clause in the contract, and that the respondents were entitled to suspend the contract, and were not bound to appropriate to the performance of that contract certain quantities of ore which they had stored at the port of shipment.

Decision of the C. A. (32 T. L. R. 485) affirmed.
EBEW VALE STEEL, IRON AND COAL CO. v. MACLEOD & CO. - H. L. (E.) 86 L. J. (K. B.) 689; 116 L. T. 449; [1917] W. N. 109; 33 T. L. R. 268

Termination.

See above, *Suspension*, col. 378.

Waiver.

See above, *Instalments*, col. 377.

War.

See above, *Dissolution*, col. 373, and *Suspension*, col. 378.

Warranty.

See *CONTRACT*, col. 111, and *COUNTY COURT*, col. 120.

Written Contract.

See above, *Custom*, col. 369, and *Rescission*, col. 378.

SALE OR RETURN — Jewellery consigned abroad on.

See *INSURANCE (Loss)*, col. 205.

SALVAGE — Appraisement — Value of salvaged ship.

See *SHIPPING*, col. 416.

— Freight.

See *SHIPPING*, col. 414.

SAMPLE — Milk — Taken "in course of delivery."

See *ADULTERATION*, col. 5.

SANDHILLS — Seashore.

See *SEWERS, COMMISSIONERS OF*, col. 390.

SCHEME — Charity — Christ's Hospital.

See *CHARITY*, col. 81.

SCHOOL.

See *EDUCATION*.

SCOTLAND — Law of.

See *WATER*, col. 454.

SEA DEFENCE RATE.

See *RATES*, col. 345.

SEA RISK.

See *SHIPPING*, col. 404.

SEAMAN.

See *SHIPPING*, col. 417.

SEASHORE — Sandhills adjoining — Ownership of.

See *SEWERS, COMMISSIONERS OF*, col. 390.

C.C.D.

SECRETARY OF STATE — Alien — Deportation.

See *ALIEN*, col. 9.

— British subject — Internment order.

See *EMERGENCY LEGISLATION*, col. 161.

SECURED CREDITOR.

See *BANKRUPTCY*, col. 63.

SECURITIES — Loan of, to Treasury.

See *CAPITAL OR INCOME*, col. 76.

SECURITY FOR COSTS.

See *ARBITRATION*, col. 26, and *PRIZE COURT*, col. 331.

SEDUCTION — Loss of service — Case for jury where constructive service of child to parent is alleged.

A., a minor daughter of B., was employed as a general servant by C. On account of an ailment, by arrangement with her mother, she was sent home for a week for treatment, and during that time was seduced. Having returned to her mistress C., the latter dismissed her on her pregnancy becoming apparent. A. returned to her mother, who, being in poor circumstances, subsequently sent her to the union, in the infirmary of which she was confined:—

Held, that during the week when A. was seduced she might be deemed to be in the service of her mother, and that the confinement in the union was such an interference with B.'s right to her service as to support the damage necessary to complete the cause of action.

The authorities in reference to seduction where there may be two contemporaneous services considered. *DENT v. MAGUIRE*
 C. A. (Ir.) [1917] 2 I. R. 59

SEIZURE — Prize Court.

See *PRIZE COURT*, col. 324.

SELANGOR.

See *STRAITS SETTLEMENTS*, col. 427.

SEPARATION DEED — Action for rescission on ground of fraud.

See *HUSBAND AND WIFE*, col. 193.

— Divorce.

See *DIVORCE*, col. 148.

— Donee of power of appointment party to deed for special purpose — Effect of recital — Release of power by implication.

See *POWER OF APPOINTMENT*, col. 309.

Husband and wife — Invalidity of marriage — Whether deed void.

The deft. had not heard of her first husband for some years, and the plt., believing that she was a widow, went through a form of marriage with her. Afterwards the parties entered into a deed of separation, under which the plt. allowed the deft. 300l. a year. At the date of the deed neither party believed that the deft.'s first husband was alive, but in fact he was alive at that date:—

Held, that as the deed was based on the existence of a valid marriage, the deed was void.

Galloway v. Galloway, 30 T. L. R. 531, applied.
LAW v. HARRAGIN - *Peterson J.* 33 T. L. R. 381; 116 L. T. 193; [1917] W. N. 193; 61 S. J. 546

H

SEQUESTRATION—Writ of—Leave to issue—
Ambassador.

See INTERNATIONAL LAW, col. 216.

SERVANT—Carrier—Theft.

See CARRIER, col. 78.

— Master and.

See MASTER AND SERVANT and
WORKMEN'S COMPENSATION.

SERVANTS—Legacies to testator's.

See WILL, col. 463.

SERVICE (CONTRACT).

See EDUCATION, col. 153, and WORK-
MEN'S COMPENSATION, col. 517.

SERVICE (NOTICE)—Licence—Intention to
oppose renewal of.

See LICENSING ACTS, col. 252.

— Rating—Post.

See RATES, col. 345.

SERVICE (PROCESS)—Admiralty—Registrar.

See SHIPPING, col. 392.

— Case stated—Notice of appeal.

See ARMY, col. 35.

*Statement of claim—Default of pleading—
Judgment—Substitution of service—Solicitor with-
drawing appearance—Service of notice of motion.*

Where the deft.'s solicitor writes to the plt.'s
solicitor withdrawing from the case after appear-
ance, the Court will deem personal service of the
statement of claim upon the deft. good service for
the purpose of enabling judgment to be
marked, in default of defence. *WALL v. CAREW*
Div. Ct. [1917] 2 I. R. 94

SET-OFF—Claim for price of goods sold—
Breach of warranty.

See COUNTY COURT, col. 120.

*Costs—Solicitor's lien—Independent proceed-
ings in King's Bench Division and in King's
Bench Division (Bankruptcy)—Jurisdiction to
allow set-off—Practice—R. S. C. (Ir.), 1905,
O. LXV., r. 18.*

The plts. brought an action in the K. B. D.
against the deft., and obtained judgment against
him for 65*l.* and costs 57*l.* 11*s.* 8*d.*, making in all
the sum of 122*l.* 11*s.* 8*d.* Subsequently the
plts. brought a debtor's summons in the K. B. D.
(Bankruptcy) claiming the said sum of
122*l.* 11*s.* 8*d.* The debtor's summons was dis-
missed, with costs amounting to 40*l.* 11*s.* 7*d.*
On an application in the K. B. D. (Bankruptcy)
by the deft.'s solicitors for a charging order on
the said sum of 40*l.* 11*s.* 7*d.*, and a cross-applica-
tion by the plts. asking for liberty to set off the
said sum of 40*l.* 11*s.* 7*d.* against an equal portion
of the sum and costs recovered in the action:—

Held, that the Court had a discretion to
allow a set-off.

Held, also, that the Court ought to allow the
set-off, notwithstanding the deft.'s solicitors'
lien.

Reid v. Cupper [1915] 2 K. B. 147 and
Puddephatt v. Leith [1916] 2 Ch. 168, followed.

YOUNG v. MEAD - Pim J. [1917] 2 I. R. 258

SETTLED LAND—*Infant tenant in tail in
possession—Duty of trustees to let and manage—
Title deeds—Conveyancing and Law of Property
Act, 1881 (44 & 45 Vict. c. 41), s. 42.*

*In re LETHBRIDGE. COULDWELL v. LETH-
BRIDGE* - Neville J. [1917] W. N. 243 ;
61 S. J. 630

*Irish estates—Capital moneys—Improvements
— Principal mansion-house — Appointment of
trustees for purposes of Settled Land Acts—Juris-
diction of High Court in England—Discretion—
Settled Land Act, 1882 (45 & 46 Vict. c. 38),
ss. 25, 26, 38, 65—Settled Land Act, 1890 (53 &
54 Vict. c. 69), s. 13—Trustee Act, 1893 (56 & 57
Vict. c. 53), ss. 25, 41, 47, 52—Trustee Act, 1893,
Amendment Act, 1894 (57 Vict. c. 10), s. 2.*

Whether the High Court of Justice in Eng-
land has or has not jurisdiction, under the
Settled Land Acts, to deal with applications to
appoint trustees of settlements of land in
Ireland, and to sanction improvements in Irish
landed properties, it recognizes that the proper
Court to deal with these matters is His Majesty's
High Court of Justice in Ireland, and not the
English Court. *In re CHARTERIS. CHARTERIS
v. KENYON* - Sargant J. [1917] 2 Ch. 257 ;
116 L. T. 718 ; [1917] W. N. 129 ;
61 S. J. 415

*Jointure charged by the settlement on part of
the estates—Sale of that part—Power of tenant for
life to transfer jointure to unsold part of estates—
Settled Land Act, 1882 (45 & 46 Vict. c. 38),
ss. 5, 20.*

In re KNIGHT'S SETTLED ESTATES

Neville J. [1917] W. N. 353 ; 62 S. J. 141

— Lunatic — Committee — Exercise of powers
of tenant for life.

See IRELAND, col. 229.

*Powers—Remainderman in fee in possession
— Portions terms — Jointress—"Settlement"—
"Tenant for life"—Settled Land Act, 1882 (45 &
46 Vict. c. 38), s. 2, sub-ss. 1, 5.*

In 1894 lands were by deed settled to the use
of A. for life, remainder to the use of B. (the
eldest son of A.) in fee simple if he should sur-
vive A., with powers for A. to create portions
terms for his younger children and for B. to
jointure any wife and to create portions terms for
his younger children. In 1896 B. married, and in
exercise of his power by deed charged a jointure
for his wife and created a portions term for his
younger children. In 1916 A. died, having in
exercise of his power created portions terms for
his younger children, and B. became tenant in
fee simple in possession subject to the several
portions terms and the jointure:—

Held, that, in the events which had happened,
the lands stood limited to or in trust for persons
by way of succession under the deed of 1894,
which constituted a "settlement" within the
definitions in s. 2, sub-s. 1, of the Settled Land
Act, 1882.

In re Mundy and Roper's Contract [1899] 1
Ch. 275 followed.

Held, also, that B. was tenant for life of the
settlement within the meaning of s. 2, sub-s. 5,
of the Act, and could exercise all the powers of a
tenant for life under the Act.

In re Marshall's Settlement [1905] 2 Ch. 325

SETTLED LAND—continued.

followed. *In re MONCKTON'S SETTLEMENT.*
MONCKTON v. CALDER - - - Neville J.
 [1917] 1 Ch. 224; 86 L. J. (Ch.) 187;
 115 L. T. 899; [1916] W. N. 413

SETTLED LEGACY—Death duties.

See WILL, col. 467.

SETTLEMENT (POOR LAW).

See POOR LAW, col. 306.

SETTLEMENT (PROPERTY).

After-acquired Property, col. 385.

Bankruptcy. *See BANKRUPTCY*.

Capital or Income. *See CAPITAL OR INCOME*.

Conversion, col. 387.

Heirlooms. *See HEIRLOOMS*.

Marriage, col. 387

Power of Appointment, col. 387.

Real Estate, col. 388.

Shares. *See CAPITAL OR INCOME*.

Tenant in Tail. *See TAIL, TENANT IN.*
Trust, col. 389.

Voluntary, col. 389.

Will. *See WILL*.

After-acquired Property.

Covenant to settle—Chattels excepted—Share of personality under intestacy—Interest of next of kin.

By a post-nuptial settlement, dated in Oct., 1908, a husband and wife covenanted that each of them would bring into settlement and make over to the trustees or trustee all the property of every kind (property consisting of a life interest or of income only or being of a value not exceeding 200*l.* and furniture, plate, jewels, and other chattels of personal, domestic, or household use excepted) to which they should respectively during their joint lives thereafter become entitled in possession by virtue of any gift or devise or bequest by will or under any settlement, or by virtue of any intestacy or other succession, the same to be held upon the trusts therein mentioned. In Jan., 1915, the husband's brother died intestate, and thereupon the husband became entitled as one of his next of kin to a one-sixth share of his personal estate, which before realization included pictures and furniture of considerable value. The pictures and furniture were sold in due course of administration, and in Aug., 1915, the husband executed an assignment to the trustees of the post-nuptial settlement of all his share and interest in the personal estate of his brother as one of the next of kin. In an action brought by the husband to rectify the deed of assignment by limiting the assignment to so much of such interest as he was in fact bound to assign under the post-nuptial settlement:—

Held, that the husband's only right at the moment of his brother's death was to have the administration of his estate carried out, the estate ascertained and realized wholly or so far

SETTLEMENT (PROPERTY) (After-acquired Property)—continued.

as was necessary, and then, subject to payment of debts and administration expenses, to have paid to him one sixth of the net proceeds, with no right of property in or right to claim any part of the estate in specie prior to realization.

Dictum of Lord Davey in *Lord Sudeley v. Att.-Gen.* [1897] A. C. 21 followed.

Held, therefore, that the whole of the interest was bound by the covenant, and that, apart altogether from other difficulties, there was no case for rectification.

The decisions in *Cooper v. Cooper* (1874) L. R. 7 H. L. 53 and *Lord Sudeley v. Att.-Gen.* [1897] A. C. 11 are reconcilable on the ground that the interest of one of the next of kin in an intestate's estate, although sufficiently specific to raise a case of election, representing as that interest does all the money's worth of the property comprised therein, is not sufficiently specific, apart from agreement with the other next of kin, where there are more than one, to enable any one of them to claim as his own any particular article from the administrator.

VANNECK v. BENHAM - - - Younger J.
 [1917] 1 Ch. 60; 86 L. J. (Ch.) 7; 115 L. T. 588; [1916] W. N. 319

Covenant to settle—Exception—Property which donor expresses intention to exempt—Gift for purpose inconsistent with settlement.

Where a covenant to settle after-acquired property contains an exception of "any property as to which in the instrument under which it is acquired . . . an intention is expressed that it shall be exempt from this present covenant or from any provision of a like nature" a gift for a declared purpose wholly inconsistent with its application under the covenant is within the exception, whether the donor is aware of the covenant or not.

Thornton v. Bright (1836) 2 My. & Cr. 230, 231, 255, applied. *In re THORNE. THORNE v. CAMPBELL-PRESTON* - Astbury J. [1917] 1 Ch. 360; 86 L. J. (Ch.) 261; 116 L. T. 540; [1917] W. N. 50; 61 S. J. 268

Covenant to settle—Husband's and wife's funds—Gift by husband to wife—Volunteers—Next of kin—Trustees not bound to enforce covenant.

A marriage settlement made in 1887 contained a covenant to settle the wife's after-acquired property upon the trusts of the wife's funds, which were in the usual form, and an agreement by the husband to settle any sums to which he became entitled under the will of his father. By a deed of gift in 1904 certain interests in reversion belonging to the husband were assured by him absolutely to his wife. The husband was also entitled to a one-third share in two sums of 9000*l.* and 4700*l.* appointed to him by the will of his father in exercise of a special power of appointment contained in a deed of family arrangement come to in 1889. The share of the 9000*l.* fell into possession in 1891 on the death of his father, and was paid to him, unknown to the trustees of his marriage settlement, and spent. The interests given by the husband to the wife and his share of the 4700*l.* came into possession in 1916 on the death of the

SETTLEMENT (PROPERTY) (After-acquired Property)—continued.

husband's mother, and were now outstanding in the trustees of his parents' settlement and of the deed of family arrangement respectively. The husband died in 1907, and there was no issue of the marriage. Subject to his widow's life interest in both funds, the ultimate residue of the wife's fund was held in trust for her statutory next of kin, and the husband's fund was held in trust for him absolutely. The widow was also tenant for life under her husband's will.

Upon a summons by the trustees of the marriage settlement to have it determined whether these interests and funds were caught by the provisions of the settlement, and, if so, whether they should take proceedings to enforce them:—

Held, (1.), that they were caught by the covenant of the wife and the agreement by the husband respectively; but

Held, (2.), that the trustees ought not to take steps to recover any of them. In the case of the wife's fund her next of kin were volunteers, who could neither maintain an action to enforce the covenant, nor for damages for breach of it, and the Court would not give them by indirect means what they could not obtain by direct procedure.

In re D'Angibau (1880) 15 Ch. D. 228 followed. *In re PRYCE. NEVILL v. PRYCE*

Eve J. [1917] 1 Ch. 234; 86 L. J. (Ch.) 383; 116 L. T. 149; [1917] W. N. 13; 61 S. J. 183

Bankruptcy.

See **BANKRUPTCY**, col. 60.

Capital or Income.

See **CAPITAL OR INCOME**, col. 77.

Conversion.

Trust for sale with the consent of tenant for life—Election—Reconversion.

In re FEENEILL'S SETTLEMENT. WRIGHT v. HOLTON - - - *Neville J.* [1917] W. N. 343; 34 T. L. R. 86; 62 S. J. 103

See **CONVERSION**, col. 113.

Heirlooms.

See **HEIRLOOMS**, col. 137.

Marriage.

See above, **After-acquired Property**, col. 385, and **BANKRUPTCY**, col. 60.

Power of Appointment.**— Children.**

See **POWER OF APPOINTMENT**, col. 309.

Power of advancement—“Expectant presumptive vested or appointed share”—Appointment to child for life with defeasible remainder to child's issue—Contingent absolute interests of child—Power to advance child.

A special power in favour of issue contained in a marriage settlement was exercised in favour of the infant plt., the only child of the marriage, in manner following:—The income

SETTLEMENT (PROPERTY) (Power of Appointment)—continued.

of the settled fund, after her father's death, to the plt. for life; after her death the capital to her children living on a day named or who should before such day attain twenty-one, or being female marry; but such trust for her children was not to take effect if the plt. was living and under fifty-two years of age on the day named, in which event she was to take the whole fund absolutely. Subject as aforesaid, the settled fund was appointed to the plt. absolutely; the appointment, however, was not to take effect unless and until the plt. attained twenty-one.

There was a power of advancement in the usual form in the settlement to the extent of one half of “the expectant or presumptive or vested share” of any child, or “the appointed share” of any child or grandchild of the marriage. The appointment contained a power of advancement in respect of “the expectant or presumptive or vested share” of any child of the plt., but no provision for her advancement:—

Held, reading the appointment into the settlement, that the advancement clause in the settlement was only exercisable in favour of the persons who next under the provisions of the settlement were or would be entitled to an expectant, presumptive, or vested share of the corpus, and did not apply to a person who might become entitled to the corpus upon failure of the prior trusts; and that the power of advancement in the settlement was not available for the purpose of providing funds out of capital for the benefit of the plt. *In re WINCH'S SETTLEMENT. WINCH v. WINCH* - - - *Peterson J.* [1917] 1 Ch. 633; 86 L. J. (Ch.) 403; 116 L. T. 589; [1917] W. N. 102; 33 T. L. R. 213

— Special power—Will.

See **POWER OF APPOINTMENT**, col. 308.

Real Estate.

No words of limitation—Equitable estates in fee simple.

By a voluntary settlement made in 1869 the settlor (after reciting that he was seised of or entitled to the hereditaments thereafter described for an estate of inheritance in fee simple in possession, and that, in consideration of the natural love and affection which he bore towards his wife and children, he was desirous of conveying the same to the uses, upon the trusts and with and subject to the powers and provisions thereafter declared) granted unto the trustees therein named, their heirs and assigns, certain freehold hereditaments and all the estate, right, title, property, claim, and demand of the settlor in, to or out of the same hereditaments, to hold the same unto the trustees and their heirs, to the uses and upon the trusts thereafter declared (that is to say) upon certain trusts in favour of the settlor and his wife during their joint lives and the life of the survivor, and subject thereto upon trust for such one or more of their children as they should by deed jointly appoint, and in default of such appointment as the survivor of them should by deed or will appoint, and in default of such

SETTLEMENT (PROPERTY) (Real Estate) —
continued.

appointment, then in trust for all their children who being sons should attain twenty-one or being daughters should attain that age or marry in equal shares, the shares of daughters to be for their separate use. The settlor empowered the trustees to apply "the annual income of the share or fortune" to which any child should for the time being be entitled in expectancy for his or her maintenance, and further empowered them to sell the hereditaments and invest the moneys to arise from such sale and stand possessed of the investments and the income thereof upon the trusts thereinbefore declared of the hereditaments:—

Held, that under the trust in default of appointment the children were entitled to equitable estates in fee simple notwithstanding the absence of express words of limitation. *In re GILLIES' SETTLEMENT. ARCHER v. PENNEY*

Eve J. [1917] 2 Ch. 205; 86 L. J. (Ch.) 769; 117 L. T. 333; [1917] W. N. 206

Shares.

— Now shares issued—Capital or income.
See CAPITAL OR INCOME, col. 77.

Tenant in Tail.

— Disentailing deed—Protector of the settlement—"Owner of prior estate"—
"Bare trustee."
See TAIL, TENANT IN, col. 429.

Trust.*Resulting.*

An appeal from an order of the C. A. in Ireland affirming a judgment of the M.R. upon the construction of a settlement, reported sub nom. *In re Boyd's Trusts, Devereux v. Calm* [1916] 1 I. R. 121.

The H. L. dismissed the appeal. *O'CONNOR v. TANNER* - H. L. (I.) [1917] A. C. 25; [1917] 1 I. R. 56

See TRUST, col. 444.

Voluntary.

Covenant to pay off mortgage—General power of appointment—Power of revocation—Undertaking by settlor to transfer property in satisfaction of covenant—Acceptance on behalf of trustees—Consideration—Death of settlor before transfer—Imperfect gift—No claim by executors—Legal interest got in by trustees—Subsequent claim by executors.

A voluntary settlement of various properties numbered consecutively contained a covenant by the settlor to apply specific funds in the discharge of a mortgage on the property numbered 8 to the intent that property 8 might be held on the trusts of the settlement free of the mortgage.

The trusts of the settlement were "for such persons and for such purposes and generally in such manner" as the settlor should from time to time during his lifetime in writing direct, and subject thereto upon trust for certain beneficiaries after his death. The settlement contained the usual power of revocation by deed.

Instead of paying off the mortgage on property 8 the settlor applied the specific funds

SETTLEMENT (PROPERTY) (Voluntary) —
continued.

in purchasing three reversions which he subsequently arranged with the trustees' solicitor to put into settlement in satisfaction of his covenant.

By a letter of directions drafted by the trustees' solicitor and subsequently confirmed by deed poll the settlor directed the trustees to hold property 8 subject to the mortgage, in lieu of the same being paid off by him, and subject to that mortgage he directed them to hold the said premises upon the trusts of the settlement, and he thereby undertook to assign the three reversions to the trustees upon the trusts of the settlement.

This undertaking was accepted by the trustees' solicitor on behalf of the trustees in satisfaction of the covenant.

The settlor died five months later without having assigned the second and third reversions, but his executors, not realizing that there could be any possible doubt as to the effective operation of the letter of directions, treated them as belonging to the trustees, who paid the policy premiums on both reversions, and in the case of the third reversion paid off a mortgage and took a reconveyance from the mortgagee.

Nine years after the settlor's death the executors claimed the second and third reversions on the ground that the settlor's undertaking to assign them was only an imperfect voluntary gift. They offered to redeem any mortgage that the trustees had paid off. The trustees thereupon brought this action for a declaration that the two reversions belonged to them:—

Held, that the settlor had shown no intention of revoking his voluntary covenant, but merely intended to satisfy his liability thereunder by undertaking to assign the three reversions, and the acceptance by the trustees' solicitor of that undertaking in satisfaction of the voluntary covenant was sufficient consideration to support the letter of directions and the undertaking therein contained.

Ex parte Berry (1812) 19 Ves. 218 applied.

Semble, even if the undertaking had been purely voluntary, and as such an imperfect gift, the trustees could have held their legal interest in the third reversion against the executors.

Strong v. Bird (1874) L. R. 18 Eq. 315, 318, discussed. *CARTER v. HUNGERFORD*

Astbury J. [1917] 1 Ch. 260; 86 L. J. (Ch.) 162; 115 L. T. 857

Will.

See WILL, col. 465.

SEVERANCE—Municipal district.

See CANADA, col. 69.

SEWER.

See LOCAL GOVERNMENT, col. 263, and
NUISANCE, col. 292.

SEWERS, COMMISSIONERS OF—*Seashore—Sandhills adjoining shore—Ownership of—Sandhills under "view, cognizance, or management" of Commissioners of Sewers—Sewers Act, 1833* (3 & 4 Will. 4, c. 22), ss. 10, 47.

⚠ Sandhills formed by the forces of nature above high-water mark adjoining the shore at

SEWERS, COMMISSIONERS OF—*continued.*

Mablethorpe, which served as a protection against the inroads of the sea, were subject to the jurisdiction of the Commrs. of Sewers, who, from time to time, repaired the same and on which they refused to allow the erection of any permanent structure without their licence. The Commrs., however, made no claim to the ownership of the sandhills except in places where they had erected toolsheds and where they had executed works of a permanent character. The plts., as the owners of adjoining inlands, claimed to be the owners of the sandhills. The conveyance to them of the adjoining inlands made no mention of the sandhills, but they had exercised certain acts of ownership thereon:—

Held—(1.) that although the sandhills were under the "view, cognizance, or management" of the Commrs. of Sewers within the meaning of that expression in s. 47 of the Sewers Act, 1833, that section did not vest the property in the sandhills in the Commrs.; (2.) that the grant to the plts. of the adjoining inlands did not pass the property in the sandhills; but (3.) that the plts. had acquired a title by prescription to the sandhills by exercising acts of ownership thereon, notwithstanding the fact that the Commrs. of Sewers had refused to allow them or their lessees to erect permanent structures thereon without licence.

Stracey v. Nelson (1844) 12 M. & W. 535 followed.

West Norfolk Farmers' Manure Co. v. Archdale (1886) 16 Q. B. D. 754 distinguished. *NESBITT v. MABLETHORPE* U. D. C.

Bailhache J. [1917] 2 K. B. 568; 86 L. J. (K. B.) 1401; 15 L. G. R. 647; 117 L. T. 365; 81 J. P. 289

SHARES—Charging order on.

See EMERGENCY LEGISLATION, col. 160.

— Company.

See COMPANY, col. 95.

— Partly paid up—New shares issued—Call—Bonus.

See CAPITAL OR INCOME, col. 77.

— Transfer.

See COMPANY, col. 96.

SHELLEY'S CASE—Rule in.

See WILL, col. 469.

SHIP.

See SHIPPING and PRIZE COURT.

SHIPPING.

Admiralty Jurisdiction, col. 392.

Bill of Lading—

Charterparty, col. 393.

Exceptions, col. 393.

Harter Act. See above, Exceptions.

Liberty to Overcarry and Tranship, col. 395.

Requisition by Admiralty, col. 395.

Statement of Weight, col. 396.

SHIPPING—*continued.**Charterparty*—

Alien Enemy, col. 397.

Arbitration Clause, col. 397.

Cessation of Hire. See below, Hire.

Demurrage, col. 398.

Frustration of Adventure, col. 401.

Guarantee, col. 402.

Hire, col. 403.

Insurance, col. 404.

Requisition by Admiralty, col. 404.

Restraint of Princes, col. 407.

War Risks, Loss by. See INTEREST.

Collision—

Anchored Ship, col. 409.

Compulsory Pilotage, col. 410.

Crossing Rule, col. 412.

Damages, col. 412.

Dropping Pilot, col. 413.

Loss of Life. See above, Damages.

Navigating without Lights, col. 413.

Compulsory Pilotage. See above, Collision.

Demurrage, col. 414.

Factory, col. 414.

Freight, col. 414.

General Average, col. 415.

Insurance, col. 415.

Maritime Lien, col. 415.

Pilot. See above, Collision.

Prize Court. See PRIZE COURT.

Salvage, col. 416.

Seaman, col. 417.

War. See above, Charterparty.

Admiralty Jurisdiction.

Damages for breach of charterparty—Action in rem against proceeds of sale of ship—Action begun in City of London Court—Proceeds in High Court—Transfer to High Court—No original jurisdiction in High Court—Service on registrar—County Courts Admiralty Jurisdiction Amendment Act, 1869 (32 & 33 Vict. c. 51), ss. 1, 3.

By virtue of ss. 1 and 3 of the County Courts Admiralty Jurisdiction Amendment Act, 1869, a county court possessing admiralty jurisdiction has jurisdiction to entertain an action in rem for breach of charterparty. There is no similar jurisdiction in the Admiralty Division of the High Court.

An action in rem for damages for breach of charterparty was begun in the City of London Court against "the owners of the proceeds of sale of the sailing vessel *M.*, now in the High Court of Justice, Admiralty Division, within the jurisdiction of this Honourable Court." The summons was served on the Admiralty Registrar

SHIPPING (Admiralty Jurisdiction)—*continued.*
as the custodian of the proceeds, and by a summons taken out in the Admiralty Division of the High Court the action was forthwith transferred to that Division:—

Held, (1.) that, although the ship had been sold before the institution of the action, the proceeds represented the res and the City of London Court had jurisdiction to entertain an action against the proceeds notwithstanding that they were in the High Court; (2.) that service on the Admiralty Registrar was good service and in accordance with admiralty practice; and (3.) (following *The Swan* (1870) L. R. 3 A. & E. 314) that the Admiralty Court by transfer acquired jurisdiction to hear and determine the action although it could not have been instituted there originally. **THE MONTROSA**

Evans, Pres. [1917] P. 1; 86 L. J. (P.) 83;
116 L. T. 383; [1916] W. N. 370;
33 T. L. R. 33

Bill of Lading.

Charterparty.

Bill of lading to be "conclusive proof of cargo shipped"—*Condition in bill of lading that "weight, &c., unknown"*—*Estoppel.*

By charterparty it was provided that a steamer should load a cargo of sugar in bags and proceed to one of several named ports and there deliver it. A clause of the charterparty provided: "The captain to sign Eastern trade bills of lading, which are to be deemed conclusive proof of cargo shipped, and their conditions to form part of this charterparty." The captain signed a bill of lading for a specified number of bags of sugar, one of the exceptions and conditions of the bill of lading being "weight, measure, quality, contents and value unknown"; the bill of lading also contained the clause "freight and all other conditions and exceptions as per charterparty." At the port of discharge there was a shortage in the number of bags of sugar, but evidence was given that all the bags placed on board had been delivered:—

Held, by Lush J., that the bill of lading was conclusive only as to the number of bags in the sense of skins or receptacles and not as to their contents.

Held, by the C. A., that the conclusive evidence clause of the charterparty was not incorporated in the bill of lading, and that the shipowners were not estopped from showing that all the bags of sugar shipped on board had been in fact delivered. **HOGARTH SHIPPING CO. v. BLYTH, GREENE, JOURDAIN & CO.** - C. A. [1917] 2 K. B. 534; 86 L. J. (K. B.) 1426; 117 L. T. 290; 33 T. L. R. 429; 22 Com. Cas. 334; 61 S. J. 544

Exceptions.

General ship—Loading at different ports—Right to re-stow cargo—Landing cargo for purpose of re-stowing—Cargo damaged while on quay.

The plts. shipped in London certain mining machinery on board the defts.' steamer *Denby Grange* for carriage to Buenos Aires via Newport under a bill of lading which gave the steamer liberty to proceed to and stay at other ports for

SHIPPING (Bill of Lading)—*continued.*

loading or discharging cargo. The bill of lading excepted liability for loss or damage arising from (inter alia) breakage. The *Denby Grange* was a general ship carrying cargo for various ports in the River Plate. She loaded cargo at Antwerp and proceeded to London, where she took on board the plts.' machinery and other cargo. She then proceeded to Newport, where she was to load a large quantity of cargo. It was found necessary at Newport for the safe stowage of the cargo and for the proper trim of the ship that two large cylinders, part of the plts.' mining machinery, should be taken out of the hold in which they were stowed and re-stowed in another hold, and for this purpose they were placed temporarily on the quay. The evidence showed that such a dealing with a portion of the cargo in the case of a general ship like the *Denby Grange*, which was intended to load and discharge cargo at various ports, was quite usual. One of the cylinders while on the quay was damaged:—

Held, that in removing the cylinders from the hold in which they had been stowed with a view to stowing them in another hold, and in the meantime temporarily placing them on the quay, the defts. did not commit any breach of their contract of carriage, and were therefore protected by the exceptions in the bill of lading. **BRUCE MARRIOTT & CO. v. HOULDER LINE, LD.**

C. A. [1917] 1 K. B. 72; 86 L. J. (K. B.) 509;
115 L. T. 846; 22 Com. Cas. 116;
[1916] W. N. 375; 61 S. J. 98

Harter Act—Limitation of liability—Goods above a certain value—Inconsistency—Construction.

Goods were shipped under a bill of lading expressed to be subject to all the terms and exceptions of the Harter Act, an Act of Congress of the United States which makes it unlawful for the owner of any vessel to insert in any bill of lading any clause whereby he is relieved from liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery of merchandise, and makes null and void and of no effect all clauses of such import inserted in bills of lading. The bill of lading contained a clause to the effect that the shipowner would not be accountable for any one package which was of a value of more than 100l. unless the value thereof was declared and extra freight agreed upon and paid. The shipowner failed to deliver one package worth more than 100l. The value thereof had not been declared, nor had extra freight been agreed upon or paid. In an action by the owner of the package to recover its value from the shipowner, who relied upon the clause:—

Held, that the clause was inconsistent with the Harter Act and must be treated as null and void.

Calderon v. Atlas Steamship Co. (1897) 170 U. S. 272 considered.

Morris v. Oceanic Steam Navigation Co. (1900) 16 T. L. R. 533 distinguished. **ANTHONY HORDERN & SONS, LD. v. COMMONWEALTH AND DOMINION LINE, LD.**

Horridge J. [1917] 2 K. B. 420; 86 L. J. (K. B.) 1048; 22 Com. Cas. 285;
116 L. T. 501; 33 T. L. R. 344

SHIPPING (Bill of Lading)—continued.*Harter Act.*

See above, *Exceptions*, col. 394.

Liberty to Overcarry and Tranship.

Mail steamer—Steamer arriving at port of destination of goods—Goods overcarried and lost after transshipment—Liability of shipowners.

The plts. shipped at Sydney on board the defts' mail steamer *Mooltan* a quantity of lead for delivery at Colombo under a bill of lading which exempted the defts. from liability for loss due to, inter alia, perils of the seas, and which also contained the following clause: "The company are to be at liberty to carry the said goods to their port of destination by the above or other steamer or steamers . . . proceeding either directly or indirectly to such port, and in so doing to carry the goods beyond their port of destination, and to tranship or land and store the goods either on shore or afloat, and reship and forward the same at the company's expense, but at merchant's risk." When the *Mooltan* arrived at Colombo riots had broken out there, which seriously interfered with the employment of coolie labour and the use of lighters into which cargo had to be discharged, and in consequence of these difficulties and the exigencies of the mail service the *Mooltan* left Colombo without having discharged the plts.' lead, and proceeded to Bombay to get the Indian mail there. The *Mooltan* would have been seriously delayed if she had waited at Colombo to discharge the plts.' lead. At Bombay the lead was transhipped into another steamer, which, while taking it back to Colombo, stranded, and in consequence a portion of the lead was lost. The plts. sued to recover the value of the lead that was lost, and the repayment of certain money paid under protest as a general average deposit, alleging that the loss occurred on a voyage from Bombay to Colombo which was not the voyage contemplated:—

Held, (1.), that, under the clause in the bill of lading giving the defts. liberty to carry goods beyond their port of destination and to reship and forward the same to that port, the defts. were entitled to carry the lead on to Bombay and to send it back to Colombo by another steamer, inasmuch as the parties must have contemplated that as the *Mooltan* was a mail steamer she would have to arrive at and leave the various ports at fixed times, and could not therefore be expected to remain at an intermediate port for an unusual time to discharge her cargo, and (2.) that, as the lead was lost by an excepted peril in the course of the voyage back from Bombay to Colombo, the defts. were protected from liability.

Sargent & Sons v. East Asiatic Co. (1915) 21 Com. Cas. 344 not followed. *BROKEN HILL PROPRIETARY CO. v. PENINSULAR AND ORIENTAL STEAM NAVIGATION CO.* - *Bray J.* [1917]

1 K. B. 688; 86 L. J. (K. B.) 273;
22 Com. Cas. 178; 116 L. T. 635

Requisition by Admiralty.

Exceptions—King's enemies—Deviation—Trader's cargo—Vessel sunk by German sub-

SHIPPING (Bill of Lading)—continued.

marine—Loss of cargo—Liability of Government as shipowners.

In Jul., 1915, a ship which had been requisitioned by the Government was leaving Australia for London with 4000 tons of meat in her insulated or refrigerated space, and carrying troops, horses, and guns. There being further cargo space to spare, traders were allowed to ship goods by the vessel; and the ship having been sunk by a German submarine in the Mediterranean, the holder of a bill of lading dated Jul. 14, 1915, for goods shipped on board this vessel "for London via Ports subject to Government requirements," claimed to recover the value of these goods from the Government. The bill of lading contained the usual exceptions of the King's enemies. Clause 4 gave liberty to proceed and stay at any ports or places, "notwithstanding that such ports and places are out of or away from the customary or geographical route" for any purposes whatever, without any liability resting on the shipowners on the ground of deviation; and there was an impressed clause, which provided: "The insulated space on the ship having been taken by His Majesty's Government, the ship in addition to any liberties expressed or implied in this bill of lading shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages or otherwise howsoever given by His Majesty's Government. . . ." The ship, on arrival at Suez at the end of Sept., was ordered to Mudros, and thence to Imbros, and was kept at those places for over three months discharging meat as required for rations for troops, such meat including, in addition to her own cargo, some 450 tons put on board her for storage from two other vessels. Ultimately she was ordered to sail to London, and was torpedoed two days later:—

Held, that, as the ship had been requisitioned by the Government at a time of war under a bill of lading which showed that the main object of the voyage was military, the Government were entitled under the bill of lading to send the ship to Imbros and Mudros and there discharge cargo, but that they had committed a breach of the contract in retaining the vessel there for use as a store ship, and had thereby disentitled themselves from relying on the exceptions in the bill of lading, with the result that they were liable in respect of the loss of the cargo.

Decision of Sankey J., 33 T. L. R. 159, reversed. *In re THE PETITION OF RIGHT OF BENJAMIN SMITH & CO.* - *C. A.*

86 L. J. (K. B.) 1147; 116 L. T. 515;
33 T. L. R. 342; 61 S. J. 459

Statement of Weight.

Prima facie evidence of quantity shipped—Short delivery.

A bill of lading for antimony oxide ore stated that 937 tons had been shipped on board; in the margin was a typewritten clause "A quantity said to be 937 tons," and in the body of the bill of lading was printed in ordinary type the clause "weight, measurement, contents and

SHIPPING (Bill of Lading)—continued.

value (except for the purpose of estimating freight) unknown":—

Held, that the bill of lading was not even prima facie evidence of the quantity of ore shipped, and that in an action against the ship-owners for short delivery the onus was upon the plts. of proving that 937 tons had in fact been shipped. *NEW CHINESE ANTIMONY CO. v. OCEAN STEAMSHIP CO.* - C. A.

[1917] 2 K. B. 664; 86 L. J. (K. B.) 1417; 23 Com. Cas. 1; 117 L. T. 297

Charterparty.*Alien Enemy.*

Charterers agents for alien enemies—Dissolution of charterparty by outbreak of war.

By a charterparty dated Jan. 18, 1913, the plts., as the owners of the British steamship *Ferngarth*, agreed to let, and the Vulcaan Co. agreed to hire, the *Ferngarth* for about five years. The Vulcaan Co. was a Dutch co., but all its shares were held by Germans; it was managed by directors who were Germans resident in Holland who were subject to the control of a supervisory committee of Germans resident in Germany; and it existed for the purpose of furthering the operations of certain German cos. The charterparty provided that the vessel should only be employed in lawful trades, and it contained the following clause: "27. That in the event of war between the nation to whose flag the chartered steamer belongs and any European Power or any other Power operating or likely to operate in European waters, charterers and/or owners shall have the option of suspending this charter for the time during which hostilities are in progress." On the outbreak of war between Great Britain and Germany on Aug. 4, 1914, the Vulcaan Co. gave notice suspending the charterparty during the continuance of hostilities. The plts. brought an action claiming a declaration that the charterparty was dissolved as being a contract with or on behalf of alien enemies:—

Held, that the charterparty was dissolved and not merely suspended by the outbreak of war, inasmuch as to keep it alive would on the one hand assure to alien enemies the use of the vessel at the end of the war, thus fortifying their commercial position during the war by enabling them to commit their own shipping without being hampered by the necessity of having it free when peace should be declared, and on the other hand it would prevent the plts. from committing the vessel on pain of being liable in damages if on the conclusion of peace they should be unable to resume the fulfilment of their contract under the charterparty. *CLAPHAM STEAMSHIP CO. v. NAAMLIOOZE VENNOOTSCHAP HANDELS-EN-TRANSPORT-MAATSCHAPPIJ VULCAAN OF ROTTERDAM*

Rowlatt J. [1917] 2 K. B. 639; 86 L. J. (K. B.) 1439; 23 Com. Cas. 13; 116 L. T. 826; [1917] W. N. 267; 33 T. L. R. 546

Arbitration Clause.

References of difference as to the "meaning and intentions of the charter"—Interpretation.

SHIPPING (Charterparty)—continued.

The plt. let to the defts. a tug under a charterparty which provided that on default of payment of hire by the defts. the plt. was to be at liberty to withdraw the tug, and that any differences between the parties as to the "meaning and intentions of the charter" should be referred to arbitration. Disputes in which the plt. alleged (inter alia) default in payment of hire were referred to arbitration, and in due course the arbitrators awarded that the plt. had a right to withdraw the tug from the service of the defts. In their defence to an action by the plt. on the award for delivery up of the tug and damages for its detention, the defts. contended that under the agreement to refer the jurisdiction of the arbitrators was limited to "the construction of the charter involving the rights of the parties under that document and did not include any application of the conditions of the charter to the facts which had given rise to the dispute," that is to say, that the arbitrators had no jurisdiction to determine whether the hire was or was not in arrear and to make the award:—

Held, that this construction was too narrow, and that the words gave the arbitrators power to apply the provisions of the charter to facts which had arisen, and to determine those facts. *RICHARDS v. JOHN PAYNE & Co.* - Rowlatt J.

86 L. J. (K. B.) 937

Cessation of Hire.

See below, *Hire*, col. 403.

Demurrage.

Lay days—Arrival at place of discharge—Readiness to discharge.

Where a charterparty or berth contract does not contain any express provision to name a berth and does not provide for delivery at a berth "as ordered," and the ship arrives at the end of the specified voyage and is anchored or moored waiting for orders, and is ready to discharge in the sense that there is nothing to prevent her being made ready at once, if desired, the lay days commence to run. *ARMENT ADOLF DIEPPE v. JOHN ROBINSON & Co., LD.* - C. A. [1917] 2 K. B. 204; 86 L. J. (K. B.) 1103; 22 Com. Cas. 300; 116 L. T. 664

Lay days—Completion of loading before expiration of lay days—Detention of ship after loading—Charterers' obligation to present bills of lading.

By a charterparty a steamer was to load a cargo and proceed therewith to one of certain named ports of call, at the master's option, for orders (unless orders were given on signing bills of lading) to discharge at a port on the Continent within certain limits. By clause 13 the steamer was to be loaded at the rate of a certain number of tons per day, otherwise demurrage was to be paid by the charterers; and by clause 16 despatch money was to be paid "for all time saved in loading" at the rate of 15*l.* a day. By clause 21 the master was to sign bills of lading in the form indorsed thereon at any rate of freight that the charterers might require, but any difference in amount between the bill of lading freight and the total gross chartered freight was to be settled at the port of lading before the

SHIPPING (Charterparty)—continued.

steamer sailed. By clause 22 orders as to the port of discharge were to be given to the master within twenty-four hours after notice of arrival at the port of call, and for any detention after that the charterers were to pay 30s. per hour.

The steamer loaded in eight days—nineteen days before the expiration of the lay days—and the master applied to the charterers for the bills of lading and orders, but they were not forthcoming until the expiration of three days from the completion of the loading, owing to the charterers, who had decided to give orders for the port of discharge on signing bills of lading, not having made up their minds as to the port to which they would order the steamer. The steamer sailed on the expiration of the third day. It was agreed that the charterers had the right to keep the steamer for twenty-four hours after completion of the loading for the purpose of settling accounts, and the shipowners claimed damages for the detention of the steamer during the two remaining days:—

Held, that, after the loading had been completed, the charterers were not entitled to keep the steamer for the full period of the lay days; that they were under an obligation to present bills of lading to the master for signature within a reasonable time—which by the agreement was twenty-four hours—after completion of the loading, and they had committed a breach of contract in having delayed to do so for two days beyond the twenty-four hours; and that, there being no agreed rate of damages specified in the charterparty for the breach, the shipowners were entitled to recover the loss actually sustained.

Held, also, that the charterers were entitled to despatch money for the whole of the nineteen days saved in the loading.

Decision of Atkin J. [1916] 1 K. B. 805 reversed. *NOLISEMENT (OWNERS) v. BUNGE & BORN* - C. A. [1917] 1 K. B. 160; 86 L. J. (K. B.) 145; 22 Com. Cas. 135; 115 L. T. 732; [1916] W. N. 364

Lay days—Discharge with customary steamer despatch—Fixed rate of discharge in regard to specified port—“Delay occasioned through any fault of the charterer”—Liability of charterers.

By a charterparty dated Jul. 13, 1915, the plts. chartered the steamship *M. B.* to the defts. for a voyage with a cargo of timber from Archangel to Sharpness Docks. By clause 10 of the charter the cargo was to be discharged with the customary steamer despatch of the port, and in the ordinary working hours. By clause 11 demurrage was fixed at 90l. per day “where delay occasioned through any fault of the charterer.” By clause 20 the steamer was to be discharged at the average rate of 100 standards of timber per weather working day. On Sept. 22, 1915, the *M. B.* arrived at Sharpness Docks with a cargo of 747 standards of timber. The plts. alleged that under the charter the lay days commenced on the following day, and that, therefore, by clause 20, the unloading should have been completed by Oct. 1, whereas in fact it was not completed until Oct. 19; and they claimed 1582l. 10s. demurrage:—

SHIPPING (Charterparty)—continued.

Held, that the plts. were entitled to succeed, since the defts. had failed to comply with the terms of the charter, which was a “fixed lay day” charter, the effect of clause 20 being to quantify by agreement that which would have been achieved by the application of clause 10.

Held, also, that where clause 20 operated, the words in clause 11, “where delay occasioned through any fault of the charterer,” became inapplicable. *BAIRD & CO. v. PRICE, WALKER & CO.* - Rowlatt J. 86 L. J. (K. B.) 935

Period of demurrage not specified—Detention of ship beyond a reasonable time—Damages.

A charterparty provided: Steamer to be loaded with customary berth despatch, and, if detained longer than five days, charterers to pay demurrage at the rate of fourpence per ton per day, provided such detention shall occur by default of charterers or their agents. The original port of loading having been wrecked by a tidal wave the ship was by agreement diverted to another port, where great difficulty was experienced in loading and despatching ships at and from that port. At the expiration of a reasonable time beyond the lay days the charterers had not commenced to load the steamer, and she was further detained for the purpose of loading. The plts. claimed damages for the detention beyond the reasonable time:—

Held, affirming the decision of Sankey J. [1917] 1 K. B. 31, that the demurrage rate of compensation applied to the whole period of detention, and therefore that the plts. were not entitled to damages as distinguished from the demurrage rate for the extra period of detention.

Western Steamship Co. v. Amaral Sutherland & Co. [1913] 3 K. B. 366 followed.

Dictum of Lord Trayner in *Lilly & Co. v. Stevenson & Co.* (1895) 22 R. 278 disapproved.

Ardan Steamship Co. v. Andrew Weir & Co. [1905] A. C. 501 distinguished. *INVERKIP STEAMSHIP CO., LD. v. BUNGE & CO.* - C. A. [1917] 2 K. B. 193; 86 L. J. (K. B.) 1042; 22 Com. Cas. 200; 117 L. T. 102; [1917] W. N. 152

When time begins to run—Arrival of ship in or off port of destination—Uselessness of arrival—Whether an excuse for non-arrival.

A charterparty provided that the ship should discharge her cargo at a certain rate, “time to count twenty-four hours after arrival in or off port of destination whether berth available or not.” The ship was ordered to Havre. In the course of the voyage she received orders from the French Admiralty to go to Cherbourg and there await her turn for a discharging berth at Havre. Notice was given that if she disobeyed those orders and went to Havre she would on arrival there be at once sent back to Cherbourg, a distance of seventy-five miles, to await her turn. She obeyed the orders and put into Cherbourg, and remained there for several days until she received permission from the French authorities to proceed:—

Held, that the fact that she would have been ordered back if she had gone to Havre, and that her going there would consequently have been

SHIPPING (Charterparty)—continued.

useless, did not make her arrival at Havre any the less a condition precedent to the lay days beginning to run, and that her time did not count while she was lying at Cherbourg waiting her turn. *OWNERS OF S.S. PLATA v. FORD & CO. Bailhache J. [1917] 2 K. B. 593; 86 L. J. (K. B.) 1473; 22 Com. Cas. 311; 117 L. T. 27*

Frustration of Adventure.

"Baltic round"—Ship detained in Baltic port—Restraint of princes—Provision for cessation of hire—Cancellation clause.

In the first case the plts. by a charterparty, headed "Time Charter," let their steamship *Dunolly* to the defts. for "one Baltic round" at a certain rate of hire per month until redelivery (unless lost) to the plts. at a coal port in the United Kingdom. Arrests and restraints of princes were mutually excepted. No voyage was to be undertaken that would involve risk of seizure or capture, and in the event of Great Britain or other European Power being involved in war affecting the working of the steamer at the commencement or during the currency of the charter the defts. had the option of cancelling the charter or insuring the steamer against all war risks for full value. The *Dunolly* came on hire on Jul. 4, 1914, and the first month's hire was paid; she was sub-chartered by the defts., and she proceeded to the Baltic and was loading a cargo for the sub-charterers at a port in Finland when war broke out between Russia and Germany on Aug. 1 and between Great Britain and Germany on Aug. 4. After Aug. 1, in consequence of orders of the Russian authorities, the *Dunolly* was not allowed to leave the Gulf of Finland and she was still there. She was quite uninsurable against war risks. On Aug. 5, by which date the *Dunolly* was partly loaded and the master had given bills of lading which were held by the sub-charterers, the defts. purported to cancel the charter, reserving certain claims. The plts. brought an action on Nov. 6, 1914, to recover the hire of the vessel to Nov. 4, 1914.

In the second case the charterparty was in the same form, and the facts were for all material purposes similar to those in the first case, except that the steamship *Auldmuir* was chartered for "two Baltic rounds," and no notice of cancellation was given. A claim by the shipowners to recover the hire of the vessel after her detention by the Russian authorities was referred to arbitration, and the arbitrators found in effect that there had been a frustration of the commercial adventure:—

Held, that both parties to the contract contemplated a commercial adventure, namely, a Baltic round; that the enforced delay was of such indefinite duration as completely to frustrate the commercial adventure; and that the contract was consequently determined, and the shipowners were not entitled to the hire claimed.

Held, also, that the cancellation clause did not apply in the events which had happened.

Judgments of Sankey J. [1916] 1 K. B. 675 and of Bailhache J. [1916] 1 K. B. 429 reversed.

SHIPPING (Charterparty)—continued.

SCOTTISH NAVIGATION CO. v. W. A. SOUTER & CO. ADMIRAL SHIPPING CO. v. WEIDNER, HOPKINS & CO. - C. A. [1917] 1 K. B. 222; 86 L. J. (K. B.) 336; 22 Com. Cas. 154; 115 L. T. 812; [1916] W. N. 385; 33 T. L. R. 70; 61 S. J. 85

See below *Requisition by Admiralty*, col. 405.

Time rate, Voyage at—Hire paid monthly in advance—Detention of ship by British Government—Dissolution of the contract—Return of hire paid in advance.

The defts.' steamer was chartered by the plts. as from Nov. 30, 1916, for a voyage to New York and back to a French Atlantic port. Hire was to be paid monthly in advance at a fixed monthly rate. The charterparty provided that if the steamer was lost or missing hire paid in advance and not earned should be returned to charterers and that charterers should have a lien on the steamer for all moneys paid in advance and not earned. There was an exceptions clause, which included arrests and restraints of princes, rulers, and peoples. The steamer was to be delivered to the charterers at Gibraltar. On Dec. 2 the steamer was detained at Gibraltar by the British authorities because she was a Greek ship, and she was not released till Feb. 10, 1917. On Dec. 12 the charterers gave notice to the owners that the charterparty was at an end. The charterers in this action claimed a declaration that the charterparty had been avoided; they also claimed to recover the month's hire paid in advance. The defts. counter-claimed for the amount of freight due if the charter was still in existence:—

Held, that the detention of the ship by the British Government amounted to a frustration of the commercial adventure, and that the contract was dissolved either on Dec. 2, when the detention began, or on Dec. 12, when the charterers gave notice that the charter was dissolved, but that the charterers were not entitled to recover back the hire paid in advance.

Decision of Atkin J., 33 T. L. R. 390, affirmed. *LLOYD ROYAL BELGE SOCIÉTÉ ANONYME v. STATHATOS - - - C. A. 34 T. L. R. 70*

Guarantee.

Ship's "dead-weight capacity" specified number of tons—Meaning of expression—Cargo of maize—Ship capable of lifting specified number of tons, but cubic capacity insufficient to take on board that weight of maize—Whether breach of guarantee by shipowner.

A printed form of charterparty provided that the ship should load and the charterers provide at Durban a full and complete cargo of maize (the words "wheat and/or flour and/or other lawful merchandise" which were in the printed form being struck out). The ship was then to proceed and discharge at one of a number of ports as ordered. The freight was to be payable at and after rates which varied according to the port of discharge. Then followed the clause: "The owners guarantee the ship's dead-weight capacity to be 3200 tons and freight to be paid on this quantity." That clause was

SHIPPING (Charterparty)—*continued*.

substituted for a printed clause which made freight payable per ton of wheat and/or flour delivered, or, if other cargo was shipped, on a full cargo of wheat and/or flour. The effect of the alteration was to make the charterparty one at a lump sum freight, varying, however, with the port of discharge. The ship in fact had a lifting capacity of 3200 tons, but she had not cubic capacity to take on board maize of that weight:—

Held, that the primary meaning of the phrase "ship's dead-weight capacity" was not her capacity to carry tons of maize, but her abstract lifting capacity, and that the mere fact that maize was mentioned as the cargo to be carried in the earlier part of the charterparty did not change the meaning of the phrase from a designation of the ship's lifting capacity in the abstract to a designation of something quite different, namely, of her combined lifting and cubic capacity applied to the ratio of bulk to weight existing in maize.

Mackill v. Wright (1888) 14 App. Cas. 106 distinguished. *W. MILLAR & Co., Ltd. v. S.S. FREDEN (OWNERS)* - - - *Rowlatt J.* [1917] 2 K. B. 657; 86 L. J. (K. B.) 1318; 22 Com. Cas. 297; 117 L. T. 446; [1917] W. N. 237; 33 T. L. R. 487; 61 S. J. 631

Hire.

Cessation of—Working of vessel prevented by damage until vessel again "in an efficient state to resume her service."

By a charterparty it was provided that "in the event of loss of time from . . . damage preventing the working of the vessel for more than twenty-four running hours, the payment of hire shall cease until she be again in an efficient state to resume her service." After the vessel had loaded a portion of her cargo, and while she was proceeding from one loading place to another, she went aground, and although, after the discharge of a part of the cargo, she was eventually got off, it was found that she was seriously damaged. The master therefore decided to discharge a further portion of the cargo, and he did so at a place some miles distant from where the vessel grounded, and thereupon the vessel proceeded to the nearest port of refuge where the necessary repairs could be effected. At that port the repairs were completed, and the vessel left the dry dock on Oct. 18. She then proceeded back to the two places where portions of the cargo had been discharged, and reloaded those portions, the reloading being completed on Oct. 30. The charterers contended that after the grounding hire ceased to be payable until the whole of the discharged cargo had been reloaded:—

Held, rejecting this contention, that the vessel was "in an efficient state to resume her service" when the repairs were finished, and, consequently, that hire again became payable from that time. *THOMAS SMAILES & SON v. EVANS & REID, Ltd.* - *Bailhache J.* [1917] 2 K. B. 54; 86 L. J. (K. B.) 1072; 22 Com. Cas. 225; 116 L. T. 595; [1917] W. N. 93; 33 T. L. R. 233

SHIPPING (Charterparty)—*continued*.

Time charter—Division of Admiralty hire between owner and charterer—Proportions.

If during the currency of a charterparty, whether it be a charterparty for a voyage or for a definite period, the ship is requisitioned by the Admiralty in such circumstances that the charterparty is not terminated by reason thereof, and if the employment of the ship by the Admiralty is of a more extensive character and more onerous to the owner than that authorized by the charterparty, the hire paid by the Admiralty for the use of the ship, whether it be more or less than the charterparty hire, is divisible between the owner and the charterer in proportion to their respective interests in the ship. The proportion will be the ratio which the sum which the owner could properly demand monthly for altering the charterparty to a charterparty in the Admiralty form (including therein a sum sufficient to indemnify the owner against the extra expense incurred by him by reason of the employment of the ship by the Admiralty and such a sum as the owner might properly demand for consenting to any alteration of the charterparty) bears to the sum which the charterer could properly demand monthly for the loss of the benefit of the charterparty, to be fixed upon the basis of the value of the ship's services pursuant to the charterparty in the tonnage market. These sums must be calculated with reference to the values ruling at the date of the requisition and on the footing that the requisition will continue for an indefinite time, but will expire substantially before the expiration of the charterparty. *CHINESE MINING AND ENGINEERING CO. v. SALE & CO.*

Rowlatt J. [1917] 2 K. B. 599; 86 L. J. (K. B.) 1465; 22 Com. Cas. 352; 117 L. T. 32; [1917] W. N. 236; 33 T. L. R. 464

See below, *Requisition by Admiralty*, col. 404.

Insurance.

War region—American waters.

By an agreement supplemental to a charterparty it was agreed that if the vessel was ordered by the charterers to trade "in the war region" war risk insurance premiums payable by the owners should be refunded to them by the charterers. In Oct., 1916, the charterers were running the vessel in American waters, and owing to the appearance of a German submarine, which destroyed six vessels in an area proximate to that in which the vessel was trading and was ordered by the charterers to trade in future, the owners paid an increased insurance premium. In an action by the owners against the charterers to recover the amount:—

Held, that the vessel had been ordered by the charterers to trade "in the war region," and the plts. were entitled to recover.

Decision of *Bailhache J.* (33 T. L. R. 132) reversed. *MASKINONGE S.S. Co. v. DOMINION COAL Co.* - - - *C. A.* 33 T. L. R. 340

Requisition by Admiralty.

Hire—Time charter—Restraint of princes.

A time charter provided that the owners should let and the charterers should hire a

SHIPPING (Charterparty)—continued.

steamship for twelve months at a certain sum payable monthly for hire. The charter contained certain restrictions on the user of the ship and certain exceptions, by one of which restraint of princes was mutually excepted. The charterers were to have the option of sub-letting the ship. After the ship had been placed at the charterers' disposal the Admiralty by notices addressed first to the owners and then to the charterers requisitioned the ship for the service of the Government, and sent the owners a form of charterparty free from the restrictions of the time charter and specifying a monthly sum for hire less than that named in the time charter. The ship was then placed at the disposal of the Admiralty and was restored to the owners during the currency of the time charter:—

Held, that the owners were entitled to hire under the time charter notwithstanding the requisition of the ship by the Admiralty. *Tamplin Steamship Co. v. Anglo-Mexican Petroleum Products Co.* [1916] 2 A. C. 397 followed.

Decision of Sankey J. [1916] 1 K. B. 726 affirmed. *MODERN TRANSPORT CO. v. DUNERIO STEAMSHIP CO.* - C. A. [1917] 1 K. B. 370; 86 L. J. (K. B.) 184; 22 Com. Cas. 125; 115 L. T. 535; 33 T. L. R. 55; 61 S. J. 71

Hire—Time charterparty—Frustration of adventure.

The doctrine of commercial frustration is applicable to time charterparties. Whether it applies to a particular time charterparty under which hire is periodically payable depends upon the circumstances, and in determining whether it is applicable the main consideration is the probable length of the total deprivation of the use of the vessel as compared with the unexpired duration of the charterparty. The party desirous of relying upon the doctrine is entitled to claim that the charterparty has been determined by frustration as soon as the event upon which the claim is based happens; the question then is what estimate a reasonable man of business, on the materials before him, would take of the probable length of the withdrawal of the vessel from service; the actual event is not material to this question.

The doctrine does not apply when the time charterer has the use of the vessel for some purpose for which under the terms of the time charterparty he is entitled to use her, even though that purpose is not the particular purpose for which he desired to use her.

By a charterparty dated Oct. 2, 1915, a vessel was hired for a term which would expire on Nov. 19, 1916, the hire being payable monthly. In the event of loss of time from certain causes preventing the working of the vessel hire was to cease until the vessel was again in an efficient state to resume her service; and there was an exception clause which included, *inter alia*, restraint of princes, but there was no provision for cessation of hire in respect of any interruption of the services of the vessel due to that exception. On Jul. 26, 1916, the vessel was requisitioned by the Admiralty and continued under that requisition until after Nov. 19, 1916, the rate of hire payable by the Admiralty being

SHIPPING (Charterparty)—continued.

considerably less than that payable by the charterers to the owners. At the time when the vessel was requisitioned no intimation was given by the Admiralty of the probable duration of the requisition. No payment of hire had been made by the Admiralty to the charterers, and no payment of hire had been made after the date of the requisition by the charterers to the owners. The charterers claimed that the requisition put an end to the charterparty:—

Held, that there was a frustration of the adventure by the requisition, and therefore that the charterers were not liable for the hire after the date of the requisition. *ANGLO-NORTHERN TRADING CO. v. EMLYN JONES & WILLIAMS*

Bailhache J. [1917] 2 K. B. 78; 86 L. J. (K. B.) 778; 22 Com. Cas. 194; 116 L. T. 414; [1917] W. N. 131; 33 T. L. R. 302

Affirmed on appeal. C. A. [1917] W. N. 320

Hire—Time charterparty—Frustration of adventure.

Appeal by the plts. from the judgment of Sankey J. [1917] W. N. 132.

The defts. claimed 10,257l. for hire under a time charterparty of the steamship *South Pacific*. The charterparty, which was entered into on Mar. 16, 1915, was for a period of not less than twelve months. The ship was placed at the disposal of the defts., the charterers, on Mar. 29, 1915, and was requisitioned by the Admiralty in Oct., 1915. The defts. contended that the requisition by the Admiralty frustrated the joint adventure of the parties and therefore put an end to the contract. The plts. contended, first, that the doctrine of frustration of the adventure had no application to a time charterparty, and, secondly, that, in any event, there had been no frustration of the adventure. Sankey J. held that there had been a frustration of the adventure and that it put an end to the contract, and gave judgment for the defts. The plts. appealed.

The C. A. dismissed the appeal. *COUNTESS OF WARWICK STEAMSHIP CO. v. LE NICKEL SOCIÉTÉ ANONYME* - C. A. [1917] W. N. 320; 43 T. L. R. 27

Hire—Time charter—Frustration of adventure.

By a charterparty dated Aug. 5, 1914, the plts. chartered a steamer from the defts. for about fifteen months, and the steamer entered on the charter in Dec., 1914. In Oct., 1915, the Admiralty requisitioned the steamer at a higher rate than the rate of hire fixed by the charterparty. In an action by the charterers against the owners for a declaration that the charter had not been determined by the requisition and that the plts. were entitled to the benefit of the difference between the rate fixed by the charter and the rate paid by the Admiralty:—

Held, that the doctrine of frustration of adventure was applicable, and therefore the action failed.

Decision of Horridge J., 33 T. L. R. 348, affirmed. *HEILGERS & CO. v. CAMBRIAN STEAM-NAVIGATION CO.* - C. A. 34 T. L. R. 720

SHIPPING (Charterparty)—continued.

Time charter—Loss—Hire to cease on loss of ship—Loss by war risks—Right of charterers to share in Admiralty compensation.

By a time charter entered into in Jun., 1914, the use of the ship was let to the charterers for a period of eight years, but it was provided that if she was lost the hire was to cease on the day of her loss. In Jan., 1917, the ship was requisitioned by the Admiralty on the terms that, in the event of her being lost by war risks, they would pay compensation on her ascertained value. Shortly afterwards, and while the ship was so under requisition, she was sunk by the enemy :—

Held, that the compensation money payable by the Admiralty on the loss of the ship belonged wholly to the owners, and that the charterers had no right to share in it. *LONDON-AMERICAN MARITIME TRADING CO. v. RIO DE JANEIRO TRAMWAY, LIGHT, AND POWER CO.*

Rowlatt J. [1917] 2 K. B. 611 ; 86 L. J. (K. B.) 1470 ; 22 Com. Cas. 359 ; 116 L. T. 725 ; 33 T. L. R. 493

Loss—Steamship—Terms contained in charterparty between owners and Admiralty—Absence of navigation lights in pursuance of Admiralty instructions—Collision—Liability of Admiralty for loss of ship—“Consequences of warlike operations”—“Cause arising as a sea risk.”

A steamship was requisitioned by the Director of Transports and was taken into the service of the Admiralty on the terms of a charterparty under which it was provided that “the Admiralty shall not be held liable if the vessel shall be lost . . . in consequence of . . . any . . . cause arising as a sea risk,” but the Admiralty took the risk of “all consequences of hostilities or warlike operations.” In pursuance of instructions from the Admiralty the steamship, upon a very dark night, was steaming with her lights obscured when she sighted on her starboard bow a French battleship. The battleship was steaming without lights, but almost immediately disclosed them. The steamship ported her helm and disclosed her port light, and the battleship almost simultaneously starboarded her helm. They were thus brought on to courses forming intersecting circles, and a collision occurred which caused the steamship to sink and become a total loss. It was admitted that in the circumstances neither vessel was to blame :—

Held, that the loss of the steamship was “a consequence of warlike operations” and not “in consequence of any cause arising as a sea risk,” and that the Admiralty was therefore liable for the loss.

Ionides v. Universal Marine Insurance Co. (1863) 14 C. B. (N.S.) 259 distinguished. *BRITISH AND FOREIGN STEAMSHIP CO. v. REX*

Rowlatt J. [1917] 2 K. B. 769 ; 86 L. J. (K. B.) 1392 ; 117 L. T. 94 ; [1917] W. N. 246 ; 33 T. L. R. 520

Restraint of Princes.

Failure to load—Reasonable apprehension—Measure of damages—Penalty clause—Limitation of liability.

SHIPPING (Charterparty)—continued.

A clause in a charterparty which provides : “Penalty for non-performance of this agreement proved damages not exceeding the estimated amount of freight,” is a penalty clause only and cannot be read as a limitation of the right to recover proved damages. *Wall v. Rederiaktiebolaget Luggude* [1915] 3 K. B. 66 approved.

The plts. sued the defts. for damages for breach of a charterparty dated Jun., 1914, whereby the defts. agreed with the plts. to provide a steamer (name to be declared at least twenty-one days before expected date of readiness) to proceed to Marioupol, on the Sea of Azov, and there load a cargo of sulphate of ammonia and to carry it to Japan for delivery there. The charterers had the option of cancelling the charter if the vessel was not ready to load by Sept. 20, 1914. The exceptions clause included arrests and restraints of princes.

On Sept. 1, 1914, the defts. declined to name a steamer on the ground that the British Government had prohibited steamers from going to the Black Sea to load, but in fact no such prohibition had been issued. The plts. accepted this refusal as a repudiation of the charterparty. The Turkish Government closed the Dardanelles on Sept. 20, 1914. The plts. had purchased the sulphate of ammonia under a contract of Apr., 1914, and, being unable to procure a steamer to carry the goods to Japan, they failed to take delivery from their sellers and had to pay them 4500*l.* to be quit of their bargain owing to a drop in the price of sulphate of ammonia. The defts. pleaded the exception of restraints of princes in justification of their breach of the charterparty. At the trial the Court found that if a ship had been sent to load the closing of the Dardanelles would have prevented her from passing out on her voyage to Japan, but that the plts. could, and would as reasonable men, have effected an insurance, including war risks, on the value of the cargo at the port of destination :—

Held (affirming the decision of the C. A.)—(1.) that the exception afforded no defence to the action, inasmuch as a reasonable apprehension of the impending closing of the Dardanelles, though justified by the event, did not constitute a restraint of princes ; (2.) that the plts. were entitled to be indemnified for being deprived by the defts.’ default of the opportunity of insuring ; and (reversing the decision of the C. A.) (3.) that the measure of damages ought not to be determined by reference to the market price of sulphate of ammonia at the port of loading at the time of the breach, there being no evidence of the existence of any market there for that article, but was the difference between the price agreed to be paid by the plts. for the goods and the market price in Japan at the expected date of arrival, after deduction of the insurance premium and expenses. *Rodocanachi v. Milburn* (1886) 18 Q. B. D. 67 distinguished.

Decision of the C. A. [1916] 2 K. B. 826 varied. *WATTS, WATTS & CO. v. MITSUI & CO.*

H. L. (E.) [1917] A. C. 227 ; 86 L. J. (K. B.) 873 ; 22 Com. Cas. 242 ; 116 L. T. 353 ; [1917] W. N. 108 ; 33 T. L. R. 262 ; 61 S. J. 382

SHIPPING (Charterparty)—continued.

Foreign ship—Ship lying in British port—Prohibition against intended voyage by law of country of owners.

By a charterparty made in the United Kingdom in 1916 the defts., as owners of a Swedish ship, chartered her to the plts. for a period of six months for trading between certain ports, all of which were outside Sweden. Losses by restraints of princes were excepted. The owners and the master were Swedish subjects ordinarily resident in Sweden. The ship being at Cardiff the plts. proposed to send her with a cargo of coals to Genoa, one of the charterparty ports. The defts. refused to allow her to go there on the ground that under the Swedish emergency legislation the ship was prohibited from carrying goods for freight between ports outside the Swedish kingdom, the owners and master being rendered liable to imprisonment for any breach of that prohibition. In an action to restrain the defts. from using the ship otherwise than in accordance with the charterparty the defts. relied on the exception of restraints of princes:—

Held, that the fact of the ship being outside Swedish territorial limits, and of the Swedish Government consequently not being in a position to enforce the restraint directly upon the ship, did not prevent the prohibition from operating as a restraint of princes; it was enough for that purpose that the Swedish Government was capable of enforcing the restraint upon the persons having the custody of the ship. *FURNESS, WITBY & Co. v. REDDERIAKTIEGOLABET BANCO*

Bailhache J. [1917] 2 K. B. 873; 117 L. T. 313; [1917] W. N. 275; 62 S. J. 25

See *SALE OF GOODS*, col. 379, and above, *Frustration of Adventure*, col. 401, and *Requisition by Admiralty*, col. 404.

War Risks, Loss by.

— War risks taken by Admiralty—Whether value recoverable from Admiralty was money recoverable on policy of insurance.

See *INTEREST*, col. 215.

Collision.***Anchored Ship.***

Steamship lying to one anchor broken adrift by steamship under way—Second anchor not in position to be let go—Collision with another anchored vessel—Rules of good seamanship.

The steamship *J.*, riding to her port anchor in the Downs, where a number of vessels were brought up, was run into and broken adrift by the steamship *Z.* There was an ebb tide of the force of three or four knots, and the *J.* drifted down and collided with the steamship *C.*, which was anchored about 500 yards away. The starboard anchor of the *J.* was on the fore-castle head and could only be let go by means of the crane and catfall. Two of the blocks of the catfall were broken by the first collision. There was evidence that if the catfall had been uninjured it would have taken eight to ten minutes to let go the anchor. The engines of the *J.* were

SHIPPING (Collision)—continued.

put full speed ahead when it was found that the second anchor could not be used.

In an action by the owners of the *C.* against the owners of the *J.* and the owners of the *Z.*:—

Held, that both the *J.* and the *Z.* were to blame. The *Z.* was to blame for her negligence in breaking the *J.* adrift, and the *J.* was also in fault inasmuch as in a place like the Downs ordinary careful seamanship required that, whether steam was being kept up or not, the second anchor should be so placed that it could be let go at once if necessity arose. *THE JESSIE AND THE ZAAANLAND* - *Hill J.* [1917]

P. 138; 86 L. J. (P.) 108; 117 L. T. 342; 33 T. L. R. 367

Compulsory Pilotage.

Vessels "navigating in the waters" from the Downs to Gravesend—Defence of the Realm (Consolidation) Regulations, 1914, reg. 39—Notice to Mariners, No. 94, of Jan. 22, 1917, revised by No. 113 of 1917—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 633—Costs.

By reg. 1 of the Notice to Mariners, No. 94, dated Jan. 22, 1917, issued by the Lords Commrs. of the Admiralty by virtue of reg. 39 of the Defence of the Realm (Consolidation) Regulations, 1914, it is provided that "All ships (other than British ships of less than 3500 tons gross tonnage, when trading coastwise or to or from the Channel islands, or to or from the Port of Brest or any French Channel port north and east of Brest, and not carrying passengers) whilst bound from, and whilst navigating in the waters from, the Downs Pilot Station to Gravesend or vice versa, must be conducted by pilots licensed by the London Trinity House."

A British steamship, while on a voyage from Spanish ports to Middlesbrough with cargo via the Black Deep and South Edinburgh Channel, came into collision with another steamship in the South Edinburgh Channel, and, therefore, in the waters to which reg. 1 of the Notice to Mariners, No. 94, applies. At the time she was being "conducted" by a duly licensed pilot to whose fault the collision was solely attributed, and her owners contended that the employment of the pilot was compulsory by law so as to give them the benefit of s. 633 of the Merchant Shipping Act, 1894:—

Held, that the words "whilst navigating in the waters from" do not qualify the words "bound from," but apply to a different class of vessels, namely, vessels navigating in the waters between, although not bound from, the Downs Pilot Station to Gravesend, and that the pilotage was compulsory so as to give the owners the benefit of the defence of compulsory pilotage under s. 633 of the Merchant Shipping Act, 1894.

The Nord [1916] P. 53 followed.

Where there is a claim and counter-claim for damage arising out of the collision and both claim and counter-claim are dismissed, the practice of the Court, in the absence of special circumstances, is that the claim be dismissed without costs, and the counter-claim be dismissed with costs, by which is meant with such

SHIPPING (Collision)—continued.

costs as are occasioned by the counter-claim.
THE NEWHOLM - Hill J. 86 L. J. (P.) 131;
 33 T. L. R. 484

Pilotage district, Vessel passing through—
Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), ss. 10, 11,
59, and 60—Merchant Shipping Act, 1894 (57 &
58 Vict. c. 60), ss. 605 and 633.

A British vessel, bound from Sharpness to Middlesbrough in ballast, was held partly to blame for a collision in the Downs off Deal, a compulsory pilotage district. The fault was solely that of the duly licensed pilot in charge of her. Her owners pleaded that pilotage was compulsory, and that they were entitled to avail themselves of the defence afforded by s. 633 of the Merchant Shipping Act, 1894.

Under s. 605 of the Merchant Shipping Act, 1894, the vessel would have been exempt from the obligation to take a pilot, but this section was repealed by s. 60 and Sched. II. of the Pilotage Act, 1913. By s. 10 of the latter Act, subject to the provisions of the Act all exemptions from compulsory pilotage cease to have effect. By s. 11, sub-s. 1, pilotage is obligatory on every vessel (other than certain ships exempted by s. 11, sub-s. 3) "while navigating in a pilotage district in which pilotage is compulsory for the purpose of entering, leaving, or making use of any port in the district":—

Held, that s. 11, sub-s. 1, excluded vessels merely passing through a compulsory pilotage district, that the vessel was exempt, and that her owners therefore were responsible for the pilot's negligence. **THE STRANTON**

Evans, Pres. [1917] P. 177; 86 L. J. (P.) 141; 33 T. L. R. 443

Portsmouth Public Traffic Regulations, 1915—Defence of the Realm (Consolidation) Regulations, 1914, regs. 36 and 39—Responsibility for pilot's negligence.

The plt.'s steamship *D.*, while at anchor in Ryde Roads, was damaged by the defts.' steamship *P.*, which had been shifting her anchorage and had dragged down on to the *D.* The collision was solely due to the negligence of the pilot on the *P.* in letting go her anchor in an improper place. The pilot had gone on board under the instructions of the Chief Examination Officer, acting under the King's Harbour-master at Portsmouth, in order to shift the *P.* as she had dragged into the fairway.

It was argued on behalf of the deft. ship-owners that under the Portsmouth Public Traffic Regulations, 1915, pilotage was compulsory; and, further, that, whether pilotage was compulsory or not, the pilot was sent on board the *P.* and was in charge of her by an order of the competent naval authorities made under reg. 36 of the Defence of the Realm (Consolidation) Regulations, 1914, and was not acting as a servant or agent of the owners so as to make them responsible for his negligence. Reg. 36 provides that: "If the master of a ship, or any other person, disobeys or neglects to observe any regulations relating to the navigation or mooring of ships in a harbour or the approaches thereto, or any signals from, or any orders, whether verbal or written, of the

SHIPPING (Collision)—continued.

competent naval or military authority of the harbour, or any examining or other officer acting under his authority, relating to such navigation or mooring, he shall be guilty of an offence against these regulations":—

Held: (1.), that there was nothing in any of the Portsmouth Public Traffic Regulations which put any compulsion upon the *P.* to take a pilot, and that neither the King's Harbour-master, nor the Commander-in-Chief, Portsmouth, by whose order the regulations were made, was the authority having power to make orders as to pilotage, which under reg. 39 of the Defence of the Realm (Consolidation) Regulations, 1914, was "vested in the Admiralty or Army Council or any pilotage authority acting under their instructions"; but, (2.), that, although pilotage was not compulsory, the pilot was in charge of the *P.* by an order of the Chief Examination Officer given under the powers of the Defence of the Realm (Consolidation) Regulations and was in no sense the servant of the defts., and that the defts. were not liable for his negligence. **THE PENRITH CASTLE** - Hill J. [1917] P. 209; 86 L. J. (P.) 160; [1917] W. N. 271; 33 T. L. R. 552

Crossing Rule.

Patrol steamer intercepting steamship—Regulations for Preventing Collisions at Sea, 1897, arts. 19, 21, 29.

The defts.' steamship *F.*, bound up the Bristol Channel, came into collision with the plt.'s patrol steamer *E.*, which was about to speak her and was exhibiting lights indicating that she was on patrol duty. The vessels were on crossing courses, and the *F.*, having the *E.* on her starboard side, under art. 19 of the Regulations for Preventing Collisions at Sea, had the duty of keeping out of the way.

It was contended on behalf of the *F.* that in the special circumstances, the object being not to keep out of the way but to come within hailing distance, art. 19 did not apply, and that the case was governed solely by art. 29 (the "good seamanship" rule):—

Held, that art. 19 applied, and that, in failing to take proper steps to keep clear of the *E.*, the *F.* was to blame; but that the *E.*, as the "keep course and speed" vessel, was also to blame for altering her course and speed; and that the blame must be distributed in the proportion of three fourths to the *F.* and one fourth to the *E.* **THE FANCY** - Evans, Pres. [1917] P. 13; 86 L. J. (P.) 38; 116 L. T. 224; 33 T. L. R. 153

Damages.

Loss of life—Pensions to relatives of deceased officers and seamen.

One of His Majesty's submarines was run into and sunk by a steamship and the crew were drowned. In an action of damage by collision brought by the Commrs. for executing the Office of Lord High Admiral of the United Kingdom against the owners of the steamship, the defts. submitted to judgment on the basis of paying to the plt. 95 per cent. of their damage to be assessed by the Admiralty Registrar. The plt. claimed as an item of damage the capitalized

SHIPPING (Collision)—continued.

amount of the pensions payable by them to the relatives of the deceased men :—

Held, that the claim failed—first, on the principle of *Baker v. Bolton* (1808) 1 Camp. 493, that in a civil court the death of a human being could not be complained of as an injury, and, secondly, on the ground of remoteness, the pensions being voluntary payments in the nature of compassionate allowances.

Decision of the C. A. [1914] P. 167 affirmed. *ADMIRALTY COMMISSIONERS v. S.S. AMERIKA (OWNERS)*
H. L. (K.) [1917] A. C. 38 ; 86 L. J. (P.) 58 ;
116 L. T. 34 ; [1916] W. N. 424 ;
33 T. L. R. 135 ; 61 S. J. 158

Measure of—Total loss—Freight prepaid—Value at time of loss or end of voyage—Prospective profits.

The measure of damage in the case of the total loss by collision of a vessel under charter is the value of the vessel at the time of her loss, plus the proper sum for freights or profits at the end of the voyages fixed by her existing charters, subject to proper deduction for contingencies and wear and tear.

The Racine [1906] P. 273 explained. *THE PHILADELPHIA* - - C. A. [1917] P. 101 ;
86 L. J. (P.) 112 ; 116 L. T. 794

Dropping Pilot.

“Keep her course and speed”—*Regulations for Preventing Collisions at Sea*, 1897, art. 21.

By art. 21 of the Regulations for Preventing Collisions at Sea it is provided that where by any of the regulations one of two vessels is to keep out of the way “the other shall keep her course and speed” :—

Held, that a steamship required under this article to keep her course and speed, which was to the knowledge of the give-way vessel, engaged at the material time in a nautical manoeuvre involving an alteration of both course and speed (dropping the pilot), was not committing a breach of the article in reducing speed and altering course in order to arrive at the proper and usual place to drop the pilot into the pilot boat. *THE ECHO* - - Evans, Pres.
[1917] P. 132 ; 86 L. J. (P.) 121 ;
117 L. T. 345

Loss of Life.

See above, *Damages*, col. 412.

Navigating without Lights.

Admiralty recommendations—Danger of enemy submarines—“Dangers of navigation and collision”—“Special circumstances” rendering a departure from the rules necessary—Regulations for Preventing Collisions at Sea, art. 27.

Where the Admiralty authorities have given directions that ships navigating in a particular locality are not to carry their masthead and side lights exhibited, but are to show them only in case of emergency in order to avoid collision, a compliance with such directions, although it involves failure to comply with arts. 1 and 2 of the Collision Regulations, may nevertheless be justified under art. 27, which requires a ship to have due regard “to all dangers of navigation.” *THE ALGOL* - - Hill J.
[1917] W. N. 347 ; 34 T. L. R. 85

SHIPPING—continued.**Compulsory Pilotage.**

See above, *Collision*, col. 411.

Demurrage.

Carriage of goods by sea—Contract for conveyance by a specified ship—Loading date fixed—Failure to load on fixed date—Subsequent loss of ship—Measure of damages.

The defts. contracted with the plts. that a specified ship should be at Northfleet on May 25, 1916, to receive a consignment of cement from barges belonging to the plts. for conveyance to Buenos Aires. The plts. sent their barges with the cement to Northfleet on the named date ; but the defts.’ ship was not there then, and on the following day the ship was sunk at sea through no default of the defts. The cement was subsequently taken on board another ship, but before it could be loaded the plts.’ barges had been detained at Northfleet for several days. The plts. claimed damages for the detention of the barges :—

Held, that the defts. had broken their contract by not having the ship at Northfleet on the date fixed, but that the contract came to an end on the following day when the ship was sunk, and that the plts. were therefore only entitled to damages for detention of the barges from the time of the breach of contract to the time of the sinking of the ship. *ASSOCIATED PORTLAND CEMENT MANUFACTURERS (1900), LD. v. HOULDER BROTHERS & CO.* - - Atkin J.
86 L. J. (K. B.) 1495 ; 22 Com. Cas. 279

Factory.

Loading—Dangerous process—Regulations of Secretary of State imposing obligations on shipowner ultra vires—Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), ss. 79, 88-104.

Appeal from the judgment of the C. A. [1916] 2 I. R. 241.

The H. L. allowed the appeal. *MACKEY v. MONKS (JAMES HENRY) (PRESTON), LD.*

H. L. (Ir.) [1917] 2 I. R. 622 ;
[1917] W. N. 318

Freight.

Abandonment at sea—Ship and cargo subsequently salvaged—Right of shipowner to freight.

The defts.’ ship while on a voyage from Archangel to Hull with a wood cargo was attacked by an enemy submarine. The master and crew were compelled by the enemy to leave the ship in the boats. The enemy attempted, but failed, to sink the ship, and she was subsequently found in a derelict condition by a British patrol boat and brought with her cargo to the Scottish coast, and was there taken possession of by the receiver of wrecks. The plts., who were the indorsees of the bills of lading, claimed delivery of the cargo to them free of freight on the ground that the defts. had abandoned the prosecution of the voyage :—

Held, that the master and crew had abandoned the ship in such circumstances as to indicate an intention not to perform the contract of affreightment, and that the plts. were,

SHIPPING (Freight)—continued.

therefore, entitled to receive the cargo free of freight.

The Cito (1881) 7 P. D. 5 and *The Arno* (1895) 72 L. T. 621 followed. *H. NEWSUM & Co. v. BRADLEY AND OTHERS* - Sankey J. [1917] 2 K. B. 112; 86 L. J. (K. B.) 1238; 22 Com. Cas. 282; 116 L. T. 669; 33 T. L. R. 309

Affirmed on appeal - C. A. 34 T. L. R. 49

See PRIZE COURT, col. 323, and below, Salvage, col. 416.

General Average.

Extraordinary and abnormal peril—Presence of enemy submarines—Hire of tug to tow vessel—Contribution by cargo owners.

In pursuance of a charterparty a sailing vessel left San Francisco for Queenstown, and was there ordered to Sharpness in the Bristol Channel. The usual practice for a sailing vessel going from Queenstown to Sharpness is for her to be towed a short distance out of Queenstown and a short distance into Sharpness. The master of the vessel hired a Dutch tug to tow her the whole way from Queenstown to Sharpness, being of opinion that that course was necessary owing to the presence of enemy submarines in the neighbourhood. In hiring the tug the master acted on his own judgment and responsibility. Although the vessel passed through waters in which she anticipated submarines, she did not see one, and of vessels alleged to have been sunk or damaged in the waters through which she passed on her voyage three-quarters were steamships. The vessel always used a tug when entering or leaving port.

In an action brought by the owners of the vessel against the owners of the cargo for a general average contribution in respect of the hire of the tug:—

Held, that the claim could not be sustained, inasmuch as a general average expenditure must be incurred to avoid extraordinary and abnormal perils as distinguished from the ordinary and normal perils of the sea, and the risk of being attacked or destroyed by the King's enemies was not an extraordinary and abnormal peril upon a voyage of the kind during the war. *SOCIÉTÉ NOUVELLE D'ARMEMENT v. SPILLERS & BAKERS, LIMITED* - Sankey J. [1917] 1 K. B. 865; 86 L. J. (K. B.) 406; 22 Com. Cas. 211; 116 L. T. 284; [1917] W. N. 52; 33 T. L. R. 189

Insurance.

See above, Charterparty, col. 404, and INSURANCE (MARINE), col. 206.

Maritime Lien.

Transferability of lien—Seamen's wages and master's disbursements—Discharge of lien by volunteers after vessel has been sold—Action in rem for reimbursement—Doctrine of subrogation.

Persons in the position of volunteers who make payments in discharge of seamen's wages and master's disbursements do not thereby acquire the maritime lien which the seamen and master had in respect thereof.

SHIPPING (Maritime Lien)—continued.

Quaere, whether, apart from the case of bottomry, a contractual assignment of a debt or claim supported by a maritime lien can carry with it the benefit of the lien. *THE PETONE*

Hill J. [1917] P. 198; 86 L. J. (P.) 164; 33 T. L. R. 554

Pilot.

See above, Collision, col. 410.

Prize Court.

See PRIZE COURT, col. 316.

Salvage.

Amount—Submarine peril—Apprehended danger of submarine attack—Removal of derelict vessel from trade route—Nautical assessor in C. A.—Remuneration of assessor.

Where salvage services were rendered by one vessel to another in circumstances where the danger of attack by an enemy submarine might have been reasonably apprehended, although no such attack in fact ensued:—

Held, that the danger incurred was one of the circumstances to be taken into consideration in assessing the amount of the salvage award.

Semble (per Ronan L.J.): The public service rendered by the removal of a derelict vessel from a trade route is another of such circumstances.

Remuneration at the rate of five guineas per diem will be allowed to a nautical assessor sitting in the C. A. (Ir.). *RAMBLER (OWNERS) v. KOTKA (OWNERS)* - C. A. (Ir.) [1917] 2 I. R. 406

Appraisal—Value of salvaged ship—Basis of valuation—Market value—Disadvantageous charter—Value to owners.

The Admiralty Marshal appraised a salvaged steamship at the sum of 369,841l. On an application to vary or set aside the appraisal on the ground that the ship had been appraised at her market value instead of at her value to her owners, which, owing to the fact that she had been chartered to time charterers at a low rate of hire in 1914 for a period which did not expire until 1930, was less than 160,000l.:—

Held, that for purposes of appraisal of a salvaged vessel contractual arrangements between the owners and charterers are immaterial, and that the Marshal's valuation was properly arrived at and was based on the right principle.

The general rule is that an appraisal by the Marshal is conclusive, and it is only in very exceptional cases that an application to vary or set aside the appraisal will be allowed. *THE SAN ONOFRE* - Evans, Pres. [1917] P. 96; 86 L. J. (P.) 103; 116 L. T. 800

Freight added to value of salvaged vessel.

The defts.' vessel was salvaged whilst on her way in ballast to the Tyne to earn freight under a charter:—

Held, that, for the purpose of making an award, the amount of freight, which had been subsequently earned, should be taken into account in estimating the value of the property salvaged. *THE KAFFIR PRINCE*

Evans, Pres. [1917] P. 26

SHIPPING (Salvage)—continued.

Neutral vessel—Cargo of munitions for the French Government—Services rendered by British armed trawlers—Claim for salvage remuneration by officers and crew—War risks and marine risks—Protection against submarine attack—Towage of abandoned vessel.

A Swedish vessel, laden with a cargo of munitions for the French Government, was stopped in the English Channel by a German submarine and the crew were ordered to take to the boats. The submarine was preparing to sink the vessel, but submerged, presumably on sighting two of His Majesty's armed trawlers, and the crew of the vessel were left in their boats. They refused to return, and the two armed trawlers stood by the vessel and eventually towed her to Falmouth. For these services the officers and crews of the trawlers claimed salvage remuneration from the owners of the Swedish vessel and her cargo, but the claim against the cargo was withdrawn. It was argued for the deft. shipowners that the plts. were bound to save a cargo of munitions for an allied Government as part of their public duty; that the saving of the ship was merely incidental to the saving of the cargo; that it was salvage from a war risk, namely, the risk of attack by enemy submarines, and not salvage from a marine risk; and that no salvage remuneration was recoverable:—

Held, that, assuming the plts. were under a duty to save the cargo, they were under no duty to the Swedish shipowners to save their vessel; that the saving was not only from submarine attack but from maritime perils also; and that, there being a salvage service, the whole risk to the saved vessel, war as well as marine risk, should be taken into account in estimating the value of the services. *THE CARRIE - Hill J. [1917] P. 224; 86 L. J. (P.) 178; 33 T. L. R. 573*

Seaman.

Desertion—Failure of master to enter in log statement of wages due to seaman "left behind"—Merchant Shipping Act, 1906 (6 Edw. 7, c. 48), s. 28.

Sect. 28, sub-s. 1, of the Merchant Shipping Act, 1906, provides that "if a seaman belonging to any British ship is left behind out of the British Islands, the master of the ship shall . . . as soon as may be, enter in the official log-book a statement of the effects left on board by the seaman and of the amount due to the seaman on account of wages at the time when he was left behind":—

Held, that the words "left behind" apply not only to the case of a seaman who has actually been left behind in the port when his ship sails therefrom, but also to the case of a seaman who has deserted from the ship and as to whom, when the ship sails from the port, the master has no information whether he is in fact left there or has already joined, and sailed from the port in, another ship. *COLBOURNE v. LAWRENCE*

Div. Ct. [1917] 2 K. B. 857; [1917] W. N. 303; 82 J. P. 6

Engagement—Signing articles—"Lawfully engaged"—Neglecting to join ship—Offence—

SHIPPING (Seaman)—continued.

Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 221—Defence of the Realm Regulations Consolidated, 1917, s. 39A.

The respondent, a seaman, entered into an agreement with one D., who was the agent of the owners of a certain steamship stationed at a port in the north of Scotland and duly requisitioned by the Admiralty, whereby he undertook to proceed from L. on a certain date to the named Scottish port. At the time of entering into the agreement he signed a document under which, after promising to start by a certain train from L., it was stipulated that articles should be signed when the respondent had got on board the steamship. The respondent never left L. and never joined the ship. On an information being laid against him under s. 39A of the Defence of the Realm Regulations, it was contended on his behalf that, as he had not signed articles in accordance with the requirements of the Merchant Shipping Act, 1894, he could not be convicted, as he had never been "lawfully engaged" within the meaning of that Act. The magistrate before whom the case was heard was of opinion that there had been no lawful engagement inasmuch as no ship's articles had been signed by the respondent, and he therefore dismissed the information:—

Held, that the learned magistrate was wrong; that although the respondent could not have been forced to proceed to sea unless he had signed articles, he was nevertheless guilty of an offence against the Defence of the Realm Regulations Consolidated, 1917, in that he was "lawfully engaged" within the meaning of s. 39A of the regulations when he entered into the agreement with D., and that the case must be remitted to the magistrate with a direction to convict. *HAWES v. BROWN - Div. Ct. 117 L. T. 408; 81 J. P. 300*

Wages and emoluments—Bonus—Seaman left behind abroad in consequence of alleged desertion—Validity of clause in agreement with seaman providing for forfeiture of bonus on desertion—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 742—Merchant Shipping Act, 1906 (6 Edw. 7, c. 48), s. 28.

By the definition contained in s. 742 of the Merchant Shipping Act, 1894, "wages" include emoluments.

By s. 28, sub-ss. 1, 2, of the Merchant Shipping Act, 1906, if a seaman belonging to any British ship is left behind out of the British Islands the master of the ship is to enter in the official log-book a statement of the amount due to the seaman on account of wages at the time when he was left behind, and on the termination of the voyage at a port in the United Kingdom is to furnish to the superintendent of the port an account of the wages and deliver to him the amount due as shown in the account.

The agreement between the master of a foreign-going ship (the voyage to terminate in the United Kingdom) and the crew contained a clause that "all members of the crew will be paid 15 per cent. war bonus over and above the rates appearing against their names on the articles for the voyage or during the period of the war, i.e., whichever terminates first. . . . In

SHIPPING (Seaman)—continued.

case of desertion and/or being paid off abroad the above bonuses will be forfeited. The wages entered against the respective names therein represent increases over the company's scale of rates ruling at the outbreak of war, which increases are added as a war bonus":—

Held, that the bonus was part of the emoluments of the seaman and was therefore included in his wages, and that the stipulation that the bonus was to be forfeited was inoperative against a seaman who had been left behind out of the British Islands, his absence being alleged to be due to desertion, inasmuch as the stipulation was contrary to the above provisions in the Acts of 1894 and 1906, and the master was therefore bound to pay to the superintendent of the port where the voyage terminated the amount of the bonus due to the seaman at the time he was left behind. *SHELFORD v. MOSEY* - - Div. Ct. [1917] 1 K. B. 154; 86 L. J. (K. B.) 289; 115 L. T. 685; 80 J. P. 463

War.

See above, Charterparty, col. 397.

SHIPS — Sale of — Particulars — Incorrect statement as to dead-weight capacity. See **CONTRACT**, col. 111.

SHOP—*Shop assistant—Retail trade—Coal merchant—Branch office—No goods kept upon the premises—Shops Act, 1912 (2 Geo. 5, c. 3), s. 19, sub-s. 1.*

The word "shop" in s. 19, sub-s. 1, of the Shops Act, 1912, has an extended and artificial meaning that goes beyond the popular and recognized meaning of the word.

A coal merchant's branch office, in which no coal is kept and only orders are dealt with, is a "shop," and the attendant in it, who takes the orders, is a "shop assistant" within the meaning of that sub-section. *WALLACE BROTHERS v. DIXON* - - Div. Ct. (Ir.) [1917] 2 I. R. 236

SHORTAGE OF SUPPLY—Sale of goods. See **SALE OF GOODS**, col. 378.

SIGNATURE—Contract—Agent. See **PRINCIPAL AND AGENT**, col. 313.

SIMILARITY—Trade name. See **TRADE NAME**, col. 440.

SITE—Transfer of—By building owner. See **LONDON**, col. 266.

SMALL BARMOTE COURT — Jurisdiction — High Peak mining customs. See **MINES**, col. 277.

SOLD NOTE—Contract—Condition—Assent of buyer. See **SALE OF GOODS**, col. 378.

SOLDIER'S WILL—Marriage—Revocation. See **PROBATE**, col. 335.

SOLICITOR.

Attachment, col. 420.

Costs, col. 420.

SOLICITOR—continued.

Ireland. See above, **Costs**.

Lien, col. 423.

Retainer. See above, **Costs**.

Taxation, col. 423.

Trustee, col. 423.

Attachment.

Default in payment of money in character of officer of Court—Retention of client's moneys—Costs of taxation of bill—Order for payment of balance due on cash account and costs of taxation—Bankruptcy of solicitor—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 4, sub-s. 4.

Peterson J. said that in this case an order had been made on the solicitor for payment of the balance of his client's moneys in his hands plus the costs of taxation incurred in ascertaining the amount of the balance so found due from the solicitor to his client, and it seemed to his Lordship that in the result this was a case similar to that with which North J. had to deal in *In re A Solicitor* [1895] 2 Ch. 66, and that the costs were moneys due from the solicitor "in his character as an officer of the Court" within exception 4 to s. 4 of the Debtors Act, 1869. This was not a case where the solicitor had been ordered to pay costs simply as an unsuccessful litigant, as in *In re Hope* (1872) L. R. 7 Ch. 523, in which case the Lords Justices, as pointed out by North J. in *In re A Solicitor* (supra), expressly excepted the case in which a solicitor was ordered, in his character of solicitor, to pay a sum of money with costs, the costs in such event being considered as included in the sum ordered to be paid. It was true that in the present case the solicitor had been adjudicated bankrupt, but that did not interfere with the punitive jurisdiction of the Court over the solicitor. He had been guilty of a gross breach of trust in putting his client's money into his own pocket, and the order would be that the applicant be at liberty to issue the writ of attachment as asked by the motion. *In re N., A Solicitor* - Peterson J. [1917] W. N. 138; 33 T. L. R. 309; 61 S. J. 445

Costs.

Bill of—Retainer—Irish solicitor undertaking professional work in Ireland for English solicitor—Liability for costs—Custom.

The personal liability of an English solicitor, at whose instance an Irish solicitor undertakes professional work in Ireland for an English client, depends in each case upon whether there is a contract express or implied that the Irish solicitor shall be entitled to recover his costs from the English solicitor.

K., an English solicitor, on behalf of an English client, instructed P., an Irish solicitor, to take proceedings in the K. B. D. in Ireland against T. S. of Dublin. At the trial of the action, without a jury, Dodd J. held a custom to be proved that where an English solicitor instructs an Irish solicitor to take proceedings in an Irish Court, the latter, in the absence of an express agreement contravening the custom, was entitled to recover from the instructing solicitor the entire outlay and two-thirds of the charges

SOLICITOR (Costs)—continued.

for professional services reasonably and properly incurred, and entered a verdict and judgment in favour of the plts. accordingly:—

Held by the C. A. (Sir I. J. O'Brien C., Ronan L.J., Molony L.J. *diss.*) (reversing the decision of the K. B. D. (Cherry L.C.J., Madden and Boyd JJ.), namely, that the plt. was estopped from alleging that the deft. was his client, and that the custom found by Dodd J. would be illegal and repugnant to the ordinary rules governing the relations between solicitor and client), that an express contract by the deft. to pay the plt. was established by the correspondence.

Held, also, that there is nothing inherently illegal in a contract by an English solicitor to pay for professional work carried out in Ireland by an Irish solicitor for an English client, and that a bill of costs for such work is taxable. **PORTER v. KIRTLAN**

C. A. (Ir.) [1917] 2 I. R. 138

Bill of — Solicitor-trustee — Taxation by co-trustee — “Party chargeable” — Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37 — R. S. C., 1883, O. LIV., r. 4 (F).

Where a member of a firm of solicitors is a trustee, entitled under the instrument of trust to charge for his professional services, and his firm deliver a bill of costs to the trustees of the instrument for work done as solicitors to the trust, the co-trustee is a “party chargeable” within the meaning of s. 37 of the Solicitors Act, 1843, and can tax the bill under the Act on a summons taken out under O. LIV., r. 4 (F). *In re H. P. DAVIES & SON - Neville J.* [1917]

1 Ch. 216; 86 L. J. (Ch.) 200; 115 L. T. 854; [1916] W. N. 428; 61 S. J. 184

Lease — “Building lease” — Solicitors’ Remuneration Act, 1881 (44 & 45 Vict. c. 44) — General Order under Act, Sched. I., Part II., First Scale, Second Scale; Sched. II.

Plt. demised three-quarters of an acre of agricultural land to the defts. for fourteen years at a rental of 150*l.* a year. The lease contained covenants by the lessees to erect on the land with all reasonable speed a cinema house, the plans to be approved by the lessor, to keep the premises in repair and at the expiration of the lease, if so required by the lessor, to remove the building; it contained also a proviso that the lessor might purchase the buildings at a valuation, and that if she did not purchase them the lessees might remove them. The lessees agreed to pay the costs of the lessor’s solicitors in connection with the lease:—

Held, that the lease was a “building lease reserving rent” within the meaning of the Second Scale in Sched. I., Part II., of the General Order made in pursuance of the Solicitors’ Remuneration Act, 1881, and that the plt.’s solicitors’ costs were taxable under that scale and not under the First Scale in Sched. I., Part II., nor under Sched. II. of the Order. **HULLYARD v. McDONALD AND OTHERS**

C. A. [1917] 2 K. B. 248; 86 L. J. (K. B.) 116; 115 L. T. 741; 61 S. J. 171

Taxation — Order of course — Prohibition against commencement of proceedings by solicitor

SOLICITOR (Costs)—continued.

pending reference — Motion to discharge — Delay — Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37 — R. S. C., 1883, O. LXX., r. 2.

In Feb., 1917, the client obtained an order of course to tax his solicitor’s bill on application made within one month from delivery. The order contained no submission to pay and no direction for delivery of papers, but contained an unqualified prohibition against the commencement of any proceedings by the solicitor in respect of the bill pending the reference. A reference was made to a taxing Master, but the client did not proceed further under the order, and the solicitor alleged on oath that he believed that the client obtained the order with the sole view of delaying payment and had no intention of proceeding under the order. The solicitor now moved to set aside the order for irregularity on the ground that the words restraining the commencement of proceedings by the solicitor were erroneously inserted, or in the alternative that these words might be struck out, or in the further alternative that, notwithstanding the order, he might be at liberty to commence proceedings against the client:—

Held, that the application in the circumstances was not too late.

Held, also, that the unqualified prohibition against the commencement of proceedings by the solicitor pending the reference was in accordance with the established form of order on the client’s application within one month from delivery and that the order could not be set aside for irregularity; but that, having regard to the uncontradicted evidence that the client was using it for the purpose of delay, the Court, under its inherent jurisdiction to prevent abuse of its orders, was entitled to direct, as it did, that unless the client obtained an appointment to tax within fourteen days the order should be discharged.

The form of order approved in *In re Brockman* [1909] 2 Ch. 170, 177, and the forms in Seton on Judgments, 7th ed., pp. 254, 255, discussed. *In re PLUMMER - - Younger J.*

[1917] 2 Ch. 432; 86 L. J. (Ch.) 702; 117 L. T. 561; [1917] W. N. 265; 61 S. J. 694

Taxation — Promissory note given by client in respect of untaxed bill of costs — Promissory note dishonoured — Right of solicitor to judgment for full amount of promissory note.

The plt., having acted as solicitor to the deft., delivered to him a bill of costs, and the deft. signed two promissory notes in payment. The first of the notes to become due was dishonoured. In an action on the note the deft. contended that he was entitled to have the bill taxed before paying the note:—

Held, without deciding whether the deft. had a right to taxation, that the plt. was entitled to judgment on the note for the amount claimed, and that if the deft. applied for taxation and was held entitled to it he might, when the other note fell due, have a defence to the extent of any sum deducted from the bill. **STEWART-MOORE v. SPRAGUE - Ivory J.**

[1917] W. N. 367; 34 T. L. R. 113

SOLICITOR—*continued.*

Ireland.

See above, Costs, col. 420.

Lien.

Documents obtained by negotiation without litigation—Bankruptcy—Trustee—Documents in solicitors' hands after bankruptcy.

The defts., a firm of solicitors, were instructed by Z. to obtain the restitution by B. of certain documents, and took various steps with that object. Z. became bankrupt, and the plt. was appointed receiver in the bankruptcy. He then instructed the defts. to take steps to obtain the documents, and eventually, as the result of negotiations conducted by them, an agreement was made between the plt. and the representatives of B., who had in the meantime died, under which the documents were handed to the defts. as the plt.'s solicitors. The defts. claimed a lien on them for all their costs arising from the attempts to recover them as from the time of the instructions given them by Z., claiming that the documents were the fruits of their exertions. The plt. admitted his liability for costs incurred on his instructions, and paid money into Court to satisfy those costs, and claimed the return of the documents:—

Held, (1.) that no lien exists on the fruits of a mere negotiation without litigation; and (2.) that in any case the possession of the documents by the defts. was obtained as the result of the fresh instructions given by the plt. and was not attributable to anything done on the instructions of Z., and that, therefore, no lien on them existed in respect of the costs incurred on Z.'s instructions.

Decision of Rowlett J. [1917] 1 K. B. 297 affirmed. *MEGUERDITCHIAN v. LIGHTBOUND*

C. A. [1917] 2 K. B. 298; 86 L. J. (K. B.) 889; 116 L. T. 790; 61 S. J. 416

Retainer.

See above, Costs, col. 420.

Taxation.

See above, Costs, col. 421, and Costs, col. 118.

Trustee.

Contract for sale of trust property—Solicitor acting for vendor and purchaser—Fiduciary relationship—Conflicting duty—Non-disclosure to purchaser of knowledge as to value—Bribe given by purchaser to vendor's agent—Waiver by vendor of right to repudiate contract—Right of purchaser to rescind.

The plt. contracted to purchase from H. and C., who were trustees, a portion of their trust property. H. was a solicitor and C. was his managing clerk. Throughout the transaction H. acted (through C.) as solicitor both for vendors and purchaser. C. failed to disclose to the plt. certain valuations previously obtained showing that the property was not worth the price which the plt. agreed to pay. The plt. knew that the vendors were trustees. In the course of the negotiations the plt. offered and C. accepted a bribe. In an action by the plt.

SOLICITOR (Trustee)—*continued.*

for rescission of the contract the defts. counter-claimed for specific performance:—

Held, affirming the decision of Younger J., that H., as the plt.'s solicitor, was bound to disclose to him all material facts relating to the matter, and that he was not relieved of that obligation by the fact that he owed a conflicting duty to his cestuis que trust. By the claim for specific performance the contract, which might have been repudiated on the ground of the bribe, was affirmed, and the plt. was not therefore deprived of his equitable right to rescission on the independent ground of the non-disclosure by his solicitor of material facts. *MOODY v. COX AND HATT* - C. A. [1917] 2 Ch. 71; 86 L. J. (Ch.) 424; 116 L. T. 740; [1917] W. N. 127; 61 S. J. 398

See WILL, col. 462.

SOLICITOR-TRUSTEE — Will — Direction to pay 200*l.* per annum "free of all duties" to.
See WILL, col. 462.

SOUTH AFRICA — Bechuanaland Protectorate — *Special Court — Jurisdiction* — "*Cases pending*" — Proclamation No. 40 of 1912, s. 1, sub-s. 2 (c).

By Bechuanaland Proclamation No. 40 of 1912, s. 1, there was established a Court to be called the Special Court for the Bechuanaland Protectorate, and it was provided by s. 1, sub-s. 2 (c), that the Court so established should have jurisdiction in "such cases pending in the Court of the Resident Commissioner, or in the Court established under s. 4 of Proclamation No. 2 of 1896, as such Court may on its own mere motion remove to the said Special Court":—

Held, that the jurisdiction of the Special Court was not confined to cases pending before the Courts named at the date of the Proclamation. *MOEAPITSO BATHOVEN v. REX*
J. C. [1917] A. C. 207; 86 L. J. (P. C.) 139

SOUTH AUSTRALIA—Income tax—Computation of profits.
See AUSTRALIA, col. 54.

SPECIAL ACT—Railway company—Deposited plans—Incorporation.
See COMPENSATION, col. 101.

SPECIAL COURT—Jurisdiction.
See SOUTH AFRICA — Bechuanaland Protectorate, col. 424.

SPECIAL POWER OF APPOINTMENT.
See POWER OF APPOINTMENT, col. 308.

SPECIAL RESOLUTION—Company.
See COMPANY, col. 85.

SPECIAL SESSIONS—Poor rate—Appeal.
See RATES, col. 343.

SPECIALIST—Building contract.
See BUILDING, col. 68.

SPECIFIC PERFORMANCE—*Parol agreement for lease—Rent in advance—Part performance—Statute of Frauds* (29 Car. 2, c. 3), s. 4.

Payment of rent in advance in respect of a parol agreement for a lease of premises of which the lessee has not taken possession is not such part performance as will take the case out of the operation of s. 4 of the Statute of Frauds.

Thursby v. Eccles (1900) 49 W. R. 281 approved and followed.

Application of the doctrine of part performance to parol contracts observed upon.

Decision of Eve J. affirmed. *CHAPRONIERE v. LAMBERT* - C. A. [1917] 2 Ch. 356; 86 L. J. (Ch.) 726; 117 L. T. 353; [1917] W. N. 232; 33 T. L. R. 485; 61 S. J. 592

— Vendor and purchaser.

See **VENDOR AND PURCHASER**, col. 451.

SPECIFICATIONS—Owner's—Local authority—Duty to consider—Housing—Demolition order.

See **LOCAL GOVERNMENT**, col. 261.

SPIKED GUARDS — Trees — Highway — Personal injury.

See **NEGLIGENCE**, col. 289.

SPRAINED WRIST — Latent tuberculosis — Infection — Total disablement — "Exclusively of all other causes."

See **INSURANCE (ACCIDENT)**, col. 201.

STAMP DUTY.

See **AUSTRALIA**, col. 53; and **COMPANY**, col. 96.

STATE, SECRETARY OF, FOR HOME AFFAIRS

— Alien—Deportation.

See **ALLEN**, col. 9.

STATEMENT — Accused — Military court of inquiry—Admissibility.

See **CRIMINAL LAW**, col. 128.

— Basis of contract—Insurance.

See **INSURANCE (BURGLARY)**, col. 201.

— On oath—Evidence in mitigation of punishment—Materiality.

See **CRIMINAL LAW**, col. 132.

STATUTE—Validating agreement—Company.

See **COMPANY**, col. 97.

STATUTE OF FRAUDS.

See **SPECIFIC PERFORMANCE**, col. 425, and **VENDOR AND PURCHASER**, col. 449.

STATUTE OF FRAUDS AMENDMENT ACT, 1828.

See **BANK**, col. 56.

STATUTES—

Enacted during the year 1917, Table of, p. lxiii.

Judicially considered during the year 1917, p. lxvii.

STATUTORY DEFENCE—Set-off—Claim for price of goods sold—Breach of warranty.

See **COUNTY COURT**, col. 120.

STATUTORY MEETING OF CREDITORS.

See **COMPANY—WINDING UP**, col. 101.

STATUTORY POWER—Unreasonable exercise of.

See **NUISANCE**, col. 293.

STEAMSHIP—Collision.

See **SHIPPING**, col. 409.

STOCK EXCHANGE — Bankruptcy—Defaulting member.

See **BANKRUPTCY**, col. 59.

Broker and client—Cover system.

Held, on the facts, that the plt., who had instructed the defts., who were stockbrokers and members of the London Stock Exchange, to make a speculative sale of Consols, had not agreed to an arrangement on the terms of keeping the defts. secured in respect of the differences with a right on the part of the defts. to close the account if he failed to do so, but that the plt. only agreed to give a certain security with a fixed cutting limit, and that therefore the plt. was entitled to damages against the defts. for closing the account when that limit had not been reached. *SURMAN v. OXENFORD & Co.*

Lush J. 33 T. L. R. 78

Membership—Refusal to re-elect—Action for declaration—Pleading—Particulars.

In an action for a declaration that the rejection of an application made by the plt. for reelection as a member of the Stock Exchange was invalid and inoperative, the defts. pleaded that they acted bona fide and honestly in the exercise of the duty and discretion given to them by r. 21 of the Stock Exchange Rules:—

Held, that the Court would not order the defts. to give particulars of the facts or grounds on which they based their decision. A traverse by a deft., even of a negative pleaded by a plt. which the plt. must establish in order to succeed, is not a matter "stated" in the defence within the meaning of O. XIX., r. 7, of the R. S. C. *WEINBERGER v. INGLIS - Astbury J. 34 T. L. R. 104; [1917] W. N. 355; 62 S. J. 160*

Non-member—Sale of shares to broker—Action for price by vendor against broker's client.

The deft. instructed Stock Exchange brokers to buy for him certain shares, and the brokers purchased a larger number of the shares from the plts., who were an issuing house and who sold as principals. The brokers then allotted some of these shares to the deft. in their books. The brokers had bought from the plts. to greater advantage than they could have bought from a jobber, and they had no interest in the sale of the shares except to earn a commission from their clients. The contract notes showed that the brokers had purchased from non-members of the Stock Exchange. In an action by the plts. against the deft. to recover the price of the shares:—

Held, that a general authority given to Stock Exchange brokers to buy shares was an authority to buy in accordance with the rules of the Stock Exchange, and as the rules had been complied with the plts., though non-members, were entitled to recover. *UNION AND RHODESIAN TRUST, LD. v. NEVILLE Ridley J. 33 T. L. R. 245*

STOPPAGE—Works—Minister of Munitions.
See **CONTRACT**, col. 108.

STORAGE AND RESHIPMENT OF GOODS
—Expense — Suing and labouring clause.
See **INSURANCE (MARINE)**, col. 212.

STRAITS SETTLEMENTS — *Registration of titles—Mortgage—Statutory form—Unregistered agreement—Contractual right—(Selangor) Registration of Titles Regulation (IV. of 1891), ss. 4, 41—(Selangor) Limitation Enactment (V. of 1896), Sched. II., art. 115.*

A system of registration of titles founded on the Torrens system and contained in the (Selangor) Registration of Titles Regulation, 1891, is in force in the Federated Malay State of Selangor. That Regulation provides by s. 4 that land shall not be capable of being transferred, transmitted, mortgaged, charged, or otherwise dealt with, except in accordance with the Regulation; and by s. 41 that whenever any land is intended to be charged, or made security, the proprietor shall execute a charge in the prescribed form, which must be registered. By the (Selangor) Limitation Enactment, 1896, Sched. II., art. 115, a suit against a mortgagee to redeem immovable property mortgaged may be commenced within sixty years of the accrual of the right to redeem.

An agreement in writing made in 1895 provided that, as security for a debt, land in the State of Selangor of which the debtor was registered as owner should be transferred to the creditor, and that it should be a condition of the agreement that if the debtor repaid the debt within six months the land should be reconveyed to him, otherwise the agreement should be void. A transfer of the land to the creditor in the form provided by the Regulation was executed upon the execution of the agreement and was duly registered. In 1913 the debtor, who had not repaid the debt, sued to redeem the land. The suit was barred by the Limitation Enactment, 1896, unless the agreement was a mortgage to which art. 115, above referred to, applied:—

Held, that, having regard to s. 4 of the Registration of Titles Regulation, 1891, the agreement conferred upon the debtor no real right in the land, but merely a contractual right, and that art. 115 of Sched. II. of the Limitation Enactment applied only where the relationship of mortgagor and mortgagee was created by a charge made and registered in accordance with the Regulation; that consequently, even if the agreement should be construed as a continuing security for the debt, the suit was barred by the Limitation Enactment. **Haji Abdul Rahman v. MAHOMED HASSAN** - J. C. [1917] A. C. 209; 86 L. J. (P. C.) 161

STRAYING HORSES.

See **NEGLIGENCE**, col. 287, and **TRESPASS**, col. 442.

STREAM—Interference with natural course of.
See **WATER**, col. 454.

STREET—Expenses of making up.
See **LOCAL GOVERNMENT**, col. 263.

STREET—*continued.*

— Lighting—Defence of Realm Regulations—
See **NEGLIGENCE**, col. 289.

— Railway — Overcrowding — Common nuisance—Criminal law—Canada.
See **CANADA**, col. 71.

STRIKING OUT WORDS—Will.
See **PROBATE**, col. 304.

SUB-LEASE.

See **LANDLORD AND TENANT**, col. 244.

SUBMARINES—Enemy.

See **INSURANCE**, col. 210, and **SHIPPING**, col. 416.

SUBROGATION—Maritime lien.

See **SHIPPING**, col. 415.

SUBSIDENCE—Surface.

See **MINES**, col. 278.

SUBSTITUTIONAL GIFT—Will.

See **WILL**, col. 475.

SUCCESSIVE HIGHWAY AUTHORITIES —
Liability for acts of former authority.
See **NEGLIGENCE**, col. 287.

SUEZ CANAL CONVENTION, 1888.

See **PRIZE COURT**, col. 327.

SUING AND LABOURING CLAUSE — Expense of storage and reshipment of goods.

See **INSURANCE (MARINE)**, col. 212.

SUIT—Maintenance of.

See **MAINTENANCE**, col. 270.

SUMMARY JURISDICTION — Husband and wife.

See **DIVORCE**, col. 142.

— Rogue and vagabond.

See **JUSTICES**, col. 240.

SUMMONS—Service—Admiralty Registrar.

See **SHIPPING**, col. 392.

SUPERINTENDING ARCHITECT—Certificate of—General line of buildings—London.
See **LONDON**, col. 265.

SUPER-TAX — Non-resident—Property in the United Kingdom—Chargeability.
See **REVENUE**, col. 361.

SUPPLY—Shortage of—Sale of goods.

See **SALE OF GOODS**, col. 378.

SUPPORT—Right to—Building—Easement.

See **LONDON**, col. 266.

— Right to—Surface.

See **MINES**, col. 278.

SURETY—Right to transfer of securities — Insurance.

See **ALIEN ENEMY**, col. 13.

SURFACE—Support.

See **MINES**, col. 278.

SURNAME—Trade mark—Application to register.

See **TRADE MARK**, col. 438.

SURPLUS ASSETS—Company—Trading with the enemy—Winding up of business—Power to distribute.

See **ALIEN ENEMY**, col. 18.

SURPLUS FUNDS—Resulting trust.

See **TRUST**, col. 444.

SURRENDER—Security.

See **BANKRUPTCY**, col. 63.

SURVEYOR—Valuation—Fees—Ryde's Scale.

See **CONTRACT**, col. 111.

SUSPENSION—Contract.

See **CONTRACT**, col. 108.

— Delivery—Sale of goods.

See **SALE OF GOODS**, col. 371.

— Discharge—Bankruptcy.

See **BANKRUPTCY**, col. 60.

SUSPENSORY CLAUSE—Sale of goods.

See **SALE OF GOODS**, col. 371.

TAIL, TENANT IN—Disentailing deed—Resettlement—Mistake—Rectification of disentailing deed—Jurisdiction—Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), ss. 40, 41, 47.

Sect. 47 of the Fines and Recoveries Act, 1833, which in some respects excludes the jurisdiction of Courts of Equity in dealing with disentailing deeds, does not preclude the Court from exercising its jurisdiction to rectify any slip or clerical error in a disentailing deed which prevents the deed as executed from being the deed of the parties.

Hall-Dare v. Hall-Dare (1885) 31 Ch. D. 251 discussed and followed.

Banks v. Small (1887) 36 Ch. D. 716 discussed and explained.

In re Otley's Estate [1910] 1 I. R. 1 not followed. *MEEKING v. MEKKING* - Astbury J. [1917] 1 Ch. 77; 86 L. J. (Ch.) 97; 115 L. T. 623; [1916] W. N. 367

Disentailing deed—Settlement—Protector of the settlement—"Owner of prior estate"—"Bare trustee"—*Fines and Recoveries Act*, 1833 (3 & 4 Will. 4, c. 74), ss. 22, 27.

"Owner of the prior estate," in s. 22 of the Fines and Recoveries Act, 1833, means beneficial owner.

A trustee who has no beneficial interest, whether or not he has duties to perform, is a "bare trustee" under s. 27.

Freeholds were settled to the use that J. B. J. should receive thereout a yearly rent-charge, and subject thereto that his wife surviving him should receive a yearly rent-charge, and subject thereto to the use of J. B. J. for life, with remainder to the use of trustees for a term of years if A. M. L. D. should so long live, and subject thereto to the use of the first and other sons of J. B. J. and his wife successively in tail male, with remainders over. The trusts of the term were to apply the rents and profits for the benefit of children or other issue of J. B. J. and

TAIL, TENANT IN—continued.

his wife. J. B. J. died leaving his wife and a son (the plt.) and a daughter, both of whom were married but had no issue. A. M. L. D. was still living. The plt. desired to disentail:—

Held, that there was no protector of the settlement. (1.) The plt. and his sister were not protector, not being owners of the term, assuming it to be "the prior estate" within s. 22. (2.) The present trustees were not protector, being "assigns" of the original trustees and excluded by s. 27. (3.) Two surviving original trustees were not protector, never having been beneficial owners. The plt. could therefore disentail without consent. *In re BLANDY JENKINS' ESTATE. BLANDY JENKINS v. WALKER* Peterson J. [1917] 1 Ch. 46; 86 L. J. (Ch.) 76; 115 L. T. 483; [1916] W. N. 320

— Money fund—Trust for devolution with entailed estate in Scotland—Proviso against absolute vesting in heirs of entail living at testator's death—Validity—Disentail.

See **HEIRLOOMS**, col. 186.

TAX—Excess profits.

See **COMMISSION**, col. 83.

— Income.

See **REVENUE**, col. 357.

— Land tax.

See **REVENUE**, col. 361.

— Landlord's property—Deduction of.

See **LANDLORD AND TENANT**, col. 244.

— Super.

See **REVENUE**, col. 358.

TAXATION—Costs.

See **COSTS**, col. 118, and **SOLICITOR**, col. 421.

— Revenue—Exemption—Canada.

See **CANADA**, col. 70.

TEACHER—Contract of service—Dismissal—Powers of managers.

See **EDUCATION**, col. 153.

TELEGRAPHIC CODE.

See **COPYRIGHT**, col. 116.

TENANCY AND TENANT.

See **LANDLORD AND TENANT**.

TENANT FOR LIFE AND REVERSIONER.

See **CAPITAL OR INCOME**, col. 76.

TENANT IN TAIL.

See **TAIL, TENANT IN**, col. 429.

TENTERDEN'S (LORD) ACT (9 Geo. 4, c. 14), s. 6.

See **BANK**, col. 56.

TERM—Landlord and tenant.

See **LANDLORD AND TENANT**, col. 249.

— Merger.

See **MERGER**, col. 276.

TERMINATION—Contract.

See CONTRACT, col. 108.

TESTAMENTARY EXPENSES.

See WILL, col. 466.

TESTATOR.

See PROBATE and WILL.

THEFT—Servant.

See CARRIER, col. 78, and INSURANCE (Loss), col. 205.

THIRD PARTY PROCEDURE—Indemnity.

See SALE OF GOODS, col. 366.

THREE YEARS' RESIDENCE—Poor law.

See POOR LAW, col. 306.

TIME—Determining rights of remaindermen—Conversion.

See CONVERSION, col. 114.

TIME CHARTER.

See SHIPPING, col. 404.

TIME POLICY—Insurance (Marine)—Unseaworthiness.

See INSURANCE (MARINE), col. 209.

TITHE RENT-CHARGE — "Rent" — Modus of composition.

See LIMITATIONS, STATUTES OF, col. 257.

TOMBSTONE—Funeral expenses—Insurance.

See INSURANCE (LIFE), col. 203.

TORT—Action of—Husband and wife.

See HUSBAND AND WIFE, col. 195.

— Floods—Damage to property.

See WATER, col. 454.

Joint tortfeasors—Dogs worrying sheep—No evidence of concerted action on part of owners—Judgment against each owner for damages caused by his own dog—County court—Practice—Defendants in person—Affidavit that defendants made certain admissions at trial—Denial in Divisional Court by counsel acting on instructions contained in letter.

The plt. was the owner of certain sheep, and each of the two defts., who lived in one house, was the owner of a dog, neither of them being in control of the dog of the other. The dogs together attacked the plt.'s sheep without the knowledge of either deft. In an action by the sheep-owner against the owners of the dogs, the amount of the damages was not disputed, but there was no evidence to show which dog did the greater amount of damage, and the judge found that probably each dog had done about half of it, and he awarded the plt. as against each deft. half the amount claimed:—

Held, that the mere fact that the dogs acted together without any connected action by their owners did not make their owners joint tortfeasors and therefore the judge was entitled to divide the damages as he had done. *PIPER v. WINNIFRITH AND LEPPARD* - - - Div. Ct. [1917] W. N. 358; 34 T. L. R. 108

Malicious abuse of authority—Conspiracy—Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61).

TORT—continued.

Appeal by the plt. from the judgment of the K. B. Div. (Ir.) [1917] 2 I. R. 73.

The C. A. (Ir.) affirmed the judgment of the K. B. D. *NEWELL v. STARKIE* - - - C. A. (Ir.) [1917] 2 I. R. 621

TOTAL DISABLEMENT—Accident.

See INSURANCE (ACCIDENT), col. 201.

TOTAL LOSS—Shipping.

See PRIZE COURT and SHIPPING.

TOWAGE.

See SHIPPING, col. 417.

TOWN POLICE CLAUSES ACT, 1847.

See HIGHWAY, col. 191.

TRADE—Custom of—Contract—Sale of goods.

See SALE OF GOODS, col. 369.

— Restraint of.

See RESTRAINT OF TRADE.

TRADE MARK.

Appeal to Judicial Committee, col. 432.

Infringement, col. 432.

Registration—

Condition, col. 433.

Distinctive Mark, col. 433.

Initials. See above, Distinctive Mark.

Invented Word, col. 436.

Proof, col. 437.

Rectification, col. 437.

Similarity, col. 437.

Surname, col. 438.

Appeal to Judicial Committee.

Special leave to appeal—Action in Newfoundland for an injunction to restrain infringement of trade mark—Decision of the Supreme Court of Newfoundland on the construction of the Newfoundland Trade Marks Act in favour of defendants—Petition by plaintiffs for special leave to appeal to His Majesty in Council—Question of law—Leave granted.

IMPERIAL TOBACCO CO. (NEWFOUNDLAND), LD. v. DUFFY - - - J. C. 33 R. P. C. 416; 34 T. L. R. 125

Infringement.

Defendants offering to submit to an injunction or give an undertaking—Judgment for plaintiffs—Costs—Set-off.

RIPPINGHILL ALBION LAMP CO. v. CLARKE'S SYPHON STOVE CO. - - - 34 R. P. C. 365

Dissimilarity of defendants' device to plaintiffs' trade mark—Reputation acquired by goods sold under plaintiffs' trade mark—Judgment for plaintiffs—Appeal by defendants allowed.

T., who had used the device of a black cat in connection with the hiring of cinematograph films, converted his business into a limited co., T. & Co., Ltd., which, in 1916, registered, in respect of films, a device consisting of a black cat standing upright on a globe and operating a

TRADE MARK (Infringement)—continued.

photographic camera on a tripod stand, and used the trade mark on their films. From 1915 the G. Co., Ltd., used, in connection with the hiring of cinematograph films, a device consisting of a circular disc with wording round it, with a seal in the central portion of it bearing the letters "G.F.H.S." Behind the disc there appeared the head and feet of a black cat. T. & Co., Ltd., brought an action against the G. Co., Ltd., for infringement of their trade mark. The plts. contended that their goods had become identified with the figure of a black cat, and that the use of the defts.' device had created an impression among persons engaged in the film trade that the defts.' business was connected with the plts.' business. The defts. contended that their device could not be mistaken for the plts.' trade mark, and that the defts.' business was well known and of a more extensive character than the plts.' :—

Held, that the prominent feature in the plts.' trade mark was a black cat; that it was not necessary for infringement that there should be such a resemblance between the plts.' and defts.' marks that an ordinary trader or an ordinary member of the public would mistake the one mark for the other; that black cat films meant the plts.' films in the district where they traded; that the identification of a well-known firm, such as the defts., with a black cat in the trade in the articles dealt in by the plts. would cause injury to the plts.' trade; and that an injunction should be granted. Judgment was given for the plts. with costs. The defts. appealed :—

Held, that the action was one for infringement of trade mark only and not to restrain passing-off; that the defts.' device was not an infringement of the plts.' registered trade mark. The appeal was allowed, and the costs above and below were given to the defts. **TATEM & CO. (1915) v. GAUMONT CO. - C. A. 34 R. P. C. 181**

Registration.**Condition.**

Geographical limitation—Trade Marks Act, 1905 (5 Edw. 7, c. 15), s. 14, sub-s. 4.

Except as provided by s. 21, there is no jurisdiction under the Trade Marks Act, 1905, to impose as a condition of registration that a mark shall only be used in a particular country. *The decision of the C. A. on this point in In re Dewhurst & Sons' Trade Mark [1896] 2 Ch. 137, under the Trade Marks Act, 1883, as amended by the Trade Marks Act, 1888, is equally applicable to a case under the Trade Marks Act, 1905. In re CRISPIN & Co.'s TRADE MARK - Eve J. [1917] 2 Ch. 267 : 86 L. J. (Ch.) 720 ; 34 R. P. C. 349 ; 117 L. T. 358 ; [1917] W. N. 205 ; 33 T. L. R. 433 ; 61 S. J. 559*

Distinctive Mark.

Distinctive name—Similarity—Meat extracts sold in fluid and cube form—Registered trade mark "Oxo"—Defendants' preparation sold in cube form under the name of "Oxot"—Injunction granted with costs.

The plts. were the owners of a registered

TRADE MARK (Registration)—continued.

trade mark consisting of the word "Oxo" under which their fluid beef and solid meat extracts were sold. The deft. offered for sale a preparation of meat put up in cube form, but not made up like the plts.' cubes, under the name of "Oxot." The plts. claimed an injunction restraining the deft. from infringing their trade mark and from selling meat cubes as being the plts.' goods under the name "Oxot" or under any other names which were colourable imitations of the word "Oxo" or were otherwise calculated to represent that the goods so sold were those of the plts. :—

Held, that the difference in sound which arose when the word "Oxot" was vocalized with or without the "t" at the end of the second syllable did not constitute a valid defence to the action, vocalization being but one of the elements to be taken into consideration in actions for infringement of trade marks; and that the adoption of the name "Oxot" by the deft. for his meat cubes was not legitimate trading and that the plts. were entitled to the injunction they claimed with costs. **Oxo, LD. v. KING - Eve J. 34 R. P. C. 165**

Initials in commonplace device—Long user—Distinctiveness of combination—Discretion—Trade Marks Act, 1905 (5 Edw. 7, c. 15), s. 9, sub-s. 5.

In 1902 the British Thomson-Houston Co. registered a trade mark in class 6 consisting of a circle with three scrolls springing from the inside with the letters "B.T.-H." within the circle, the groundwork inside the circle being of a dark colour and of an embossed character. There was subsequently another registration of this mark in class 6 and also registrations thereof in other classes. The co. began to use on their stationery a mark similar to this, except that the groundwork was plain white instead of dark and without any embossed character. In 1916 a complaint was made to the co. by the Registrar of Trade Marks of the use on stationery of the last-mentioned mark coupled with the words "Registered Trade Mark," on the ground that it differed materially from the registered trade mark. Without admitting that the registration did not cover the mark as so used by them, the co. applied to register that mark in class 6. The Registrar refused the application on the ground that the mark applied for was not distinctive, and also in the exercise of his discretionary power. Being asked to give his reasons in writing, he inquired whether the applicants were willing that the mark applied for should be associated with their other marks and to disclaim the exclusive use of the letters "B.T.-H.," to which the applicants assented. The Registrar then gave the reasons for his decision, which were, stating them shortly, that the mark consisted only of the letters and commonplace additions. The applicants appealed to the Court, and filed evidence of the extensive use and distinctiveness of the mark :—

Held, that, on the evidence, the mark applied for had become distinctive of the applicant's goods and business, and that the mark was a compound mark and must be looked at as a whole, and was distinctive, and that the Regis-

TRADE MARK (Registration)—continued.

trar had exercised his discretion by taking into consideration grounds that he ought not to have considered.⁶ The appeal was allowed, and the application was ordered to proceed.

Du Cros' Applications [1913] A. C. 624 and *Benaz's Application*, 30 R. P. C. 177, distinguished. *In re BRITISH THOMSON-HOUSTON CO.'S APPLICATION* - - - **Asbury J. 34 R. P. C. 169 ; [1917] W. N. 88 ; 61 S. J. 353**

Word mark—Mark whether calculated to deceive—Appeal by opponents dismissed—Costs of hearing before Registrar of Trade Marks.

Applications were made for registration in class 5 and class 12 of a trade mark consisting of a representation of three bars of iron laid across one another in a triangular shape, including the word "Bravo" in Roman characters and the same word in Russian lettering. The applications were opposed by three firms:—

Held, that the applicants' mark was not likely to be mistaken for the opponents' mark, that the registration should be allowed to proceed, and that the appeal should be dismissed with costs. The Court intimated that the respective costs of the opponent firms of the hearing before the Registrar of Trade Marks ought to be assessed by the Registrar.

Christiansen's Trade Mark, 3 R. P. C. 54, followed. *In re RICHARD CRISPIN & CO.'S APPLICATIONS* - - **Eve J. 34 R. P. C. 340 ; [1917] W. N. 299**

Word mark—Ordinary application to register the word "National"—Application refused by Registrar of Trade Marks—Appeal—Special application to register the same word—Motion that the Registrar proceed with the same—Word having no direct reference to the character or quality of the goods—Distinctive word—Evidence of distinctiveness—Discretion of the Registrar—Appeal to the Court allowed and application ordered to be proceeded with—Appeal to the C. A. dismissed—Trade Marks Act, 1905, ss. 9 and 44.

The National Cash Register Co. of the United States applied to register the word "National" in class 6 in respect of cash registering machines and other goods. The Registrar of Trade Marks held that the use of this word by a private trader would be calculated to lead the public to believe that the goods were produced under public auspices and for the common benefit, and that the proposed mark was not adapted to distinguish the applicants' goods; and on this ground, as well as in the exercise of his discretion, he refused the application. The applicants appealed to the Court; and they also made a special application for registration of the same word under s. 9, par. 5, of the Trade Marks Act, 1905, which came before the Court with their appeal. On the first-mentioned application leave was given at the hearing to rely on grounds not taken by the Registrar, and it was contended that the Registrar could, in his discretion, refuse any common or ordinary adjectival word, however strong the evidence of its distinctiveness. It was held that the word "National" had, on the evidence before the Court, been for many years identified with the applicants, and

TRADE MARK (Registration)—continued.

used to denote the machines manufactured by them as distinguished from the machines of other makers; that evidence of such user was relevant to the first-mentioned application to register; that there was no evidence that anyone had ever purchased a "National" machine under the impression that it was produced under public auspices or for the common benefit, and that the word was not calculated to deceive; and that it had no direct reference to the character or quality of the goods, and was within par. 4 of s. 9; and that the language of s. 9 did not warrant the exclusion from par. 4 of all common or ordinary adjectival words; that as regards any special applicability to the goods, the name "National" was neutral, except for such suggestion as might arise from the name of the goods being in part identical with the name of the manufacturers; and that such neutrality was no theoretical bar to the mark becoming distinctive and capable of registration, and that importance should be attached to the fact that the word had been registered as the trade mark of the applicants not only in the United States but in nearly all the civilized countries of the world. The appeal from the Registrar was allowed and the application was directed to be proceeded with. The second application was not dealt with, but the Court expressed the view that, should it be held that the word "National" was not within par. 4, the application under par. 5 should be allowed. The applicants were ordered to pay the costs of the Registrar. The Registrar of Trade Marks appealed:—

Held, that the word "National" had identified the applicants' goods for thirty years; that it was not calculated to deceive; and that its registration ought not to be refused in the exercise of judicial discretion.

The appeals were dismissed. The Registrar's costs were not asked for. *In re NATIONAL CASH REGISTER CO.'S APPLICATIONS* - - **C. A. 34 R. P. C. 273, 354**

Initials.

See above, *Distinctive Mark*, col. 434.

Invented Word.

"Chocaroons"—Not calculated to deceive—New name for new article—Trade Marks Act, 1905 (5 Edw. 7, c. 15), ss. 3, 9, 11.

The applicants applied to register as a trade mark the word "Chocaroons" in respect of a new sweetmeat of the same character as chocolate macaroons, but differing from them in general appearance and taste:—

Held, that, although the word was "an invented word" within s. 9 of the Trade Marks Act, 1905, and was not "calculated to deceive" within s. 11 of the Act, it was not used for the purpose of indicating the goods of the applicants within s. 3 of the Act, but to denominate a particular kind of sweetmeat which everybody had the right to make, and that it ought not therefore to be registered as a trade mark.

Appeal from *Eve J.*, 34 R. P. C. 1, reversed. *In re WILLIAMS & CO.'S APPLICATION* - **C. A. 86 L. J. (Ch.) 273 ; 34 R. P. C. 197 ; 116 L. T. 456 ; 33 T. L. R. 199 ; 61 S. J. 385**

TRADE MARK (Registration)—*continued*.*Proof.*

Certificate—Practice—Trade Marks Act, 1905 (5 *Edw.* 7, c. 15), s. 50.

This was an application by W. Crawford & Sons, Ltd., to register the surname "Crawford" in class 42 for biscuits and shortbread. The co. were also the proprietors of three existing registered trade marks, and in the course of the hearing it was proposed on behalf of the co. to prove the registration of these marks by putting in a letter from the Patent Office to the applicants dated Apr. 8, 1915, in which the number of each mark was given, with the reference to the number and page in the *Trade Marks Journal*, in which it was advertised. The *Trade Marks Journal* was also put forward as evidence of the registration of the surname "Callender" as a trade mark in connection with electric cables.

Neville J. said that the certificate of registration of a trade mark was the legal and proper proof of its registration, and should be produced as a matter of practice when it is desired to use the registered mark in evidence. *In re WILLIAM CRAWFORD & SONS' APPLICATION* - Neville J. [1917] W. N. 60; 34 R. P. C. 94; 61 S. J. 336

Rectification.

Register—Limitation to particular goods—Costs.

On an application to register a trade mark in class 42 in respect of fish of all kinds packed in tins, the Registrar objected that the same mark was already registered in respect of all goods in class 42, with certain immaterial exceptions. The applicants gave notice of motion for rectification of the register by removal of the registered trade mark from the register, or by limiting the registration by excluding canned fish and goods of a like kind. The owners of the trade mark agreed out of Court to an order to that effect, and did not at first appear on the motion, but on behalf of the Registrar an order for removal was asked for, and was made provisionally, notice to be given to the owners. Thereupon the owners appeared and filed evidence of long use on sugar, and it was agreed that an order should be taken limiting the registration to sugar. The applicants did not ask that the owners should pay their costs, but asked that they should pay the Registrar's costs:—

Held, that under the circumstances it was fair that the applicants and the owners should each pay half the costs of the Registrar. *In re BURKE'S TRADE MARK* - Astbury J. 34 R. P. C. 213

Similarity.

Application to register "Cubanola" as an important part of a trade mark for Havana cigars—Application opposed—"Cubanola" used by opponents in respect of British cigars—Confusion—"Merit" of opponents—Application refused by Registrar—Appeal to the Court—Appeal dismissed.

In 1915 the Havana Commercial Co., a corporation carrying on business as cigar manufacturers in New York and Havana, applied to register in class 45 a trade mark of which the

TRADE MARK (Registration)—*continued*.

word "Cubanola" was an important feature. The application was opposed by George Wilks, Ltd., cigar merchants, who had for the past fourteen years used the word "Cubanola" in connection with cigars of British manufacture sold by them under the fictitious firm name of "de Lorenzo y Ca"; the principal ground of opposition was that the registration would cause confusion in the trade and to the public. The Registrar of Trade Marks decided that, although the opponents' use of the word "Cubanola" had been improper, he was bound to take notice of it, and he refused the application. From this decision the applicants appealed to the Court. It was admitted by a director of the opponent co. that their sales of "Cubanola" cigars had never been more than 200 boxes per annum:—

Held, that, though, in the circumstances, the opponents, as claimants to a mark, had no merits whatever, the matter did not depend solely upon their ownership of the mark and that the application had to be considered from the point of view of the public, and there being a possibility of confusion in the mind of the public, if the application were acceded to, the Registrar's discretion ought not to be interfered with. The appeal was dismissed with costs. *In re HAVANA COMMERCIAL Co.'s APPLICATION* - Peterson J. 33 R. P. C. 399

Surname.

Application to register—"Crawford"—Distinctive word—User with registered trade mark—Trade Marks Act, 1905 (5 *Edw.* 7, c. 15), ss. 3, 9, sub-s. 5.

An application by William Crawford & Sons, Ltd., for leave to proceed under s. 9, sub-s. 5, of the Trade Marks Act, 1905, with the registration of the surname "Crawford" as a trade mark in class 42 for biscuits, cakes, and shortbread was refused, although the name was identified with their goods and they had for some seventy years used the word "Crawford's" on their labels and in their advertisements to distinguish their goods and had acquired a most extensive trade throughout Scotland and in England, it appearing that "Crawford" was a common surname in Scotland, in the sense of being shared by many persons, and not uncommon in England.

In re Cadbury Brothers' Application [1915] 1 Ch. 331 distinguished.

Semble, the fact that a trader to identify his goods uses for many years on the labels and in the advertisements of his goods a name, and also his registered trade mark not having any reference to the name, militates against the name being per se capable of registration as a trade mark. *In re CRAWFORD (WILLIAM) & SONS' APPLICATION* - Neville J. [1917] 1 Ch. 550; 86 L. J. (Ch.) 325; 34 R. P. C. 94; 116 L. T. 440; [1917] W. N. 72; 61 S. J. 315

Application to register "Moore & Moore, London" as an old mark—Application refused by the Registrar of Trade Marks—Appeal to the Court—Application for the same mark under par. 5 of s. 9 of the Trade Marks Act, 1905, heard by the Court—The Registrar directed to proceed with this application—No order on the appeal

TRADE MARK (Registration)—*continued.*

from the Registrar's decision on the first application, but this to be without prejudice to any fresh application to register the mark as an old mark notwithstanding that decision.

Since 1855 Henry Heatley Moore and his predecessors in business had used the words "Moore & Moore, London" as a trade mark in respect of pianofortes manufactured and sold by them. In 1915 H. H. Moore applied for the registration of this mark as an old mark in class 9 in respect of pianofortes. The Registrar of Trade Marks refused the application, and the applicant appealed by motion to the Court. The applicant also made a special application for the registration of these words as a trade mark under par. 5 of s. 9 of the Trade Marks Act, 1905, and asked that this application should be heard by the Court. On the two matters coming on for hearing before the Court, it being established that this mark had become distinctive of the applicant's goods, the Registrar was directed to proceed with the second application. No order in respect of the first application was made on the appeal, but this was to be without prejudice to any fresh application to register the mark as an old mark. *In re MOORE'S APPLICATIONS* - - - Astbury J. 34 R. P. C. 154

TRADE NAME—Business name—Non-registration—Unregistered person enforcing rights under or arising out of business contract—Registration of Business Names Act, 1916 (6 & 7 Geo. 5, c. 58), s. 8.

Appeal from Brompton County Court.

The plt. Daniel obtained judgment on Jan. 31, 1917, against one Rogers, who carried on business as a ladies' costume maker at 955, Fulham Road, and on Jun. 12, 1917, certain goods at that address were seized in execution under the judgment. These goods were claimed by Miss Fantini as hers. By an assignment dated Jan. 9, 1917, Rogers agreed to sell to Miss Fantini the goodwill and stock-in-trade of the business at 955, Fulham Road, and on Jan. 17 Miss Fantini, who had carried on a similar business at another address as Laurette, took possession of the premises, 955, Fulham Road, and was carrying on business there when the execution was levied. She continued to use the name Laurette on her invoices. Miss Fantini, who had not registered under the Registration of Business Names Act, 1916, having claimed the goods, interpleader proceedings followed. In those proceedings Miss Fantini gave evidence as to the purchase from Rogers, and she produced the assignment of Jan. 9. The execution creditor contended, inter alia, that as the claimant was not registered under the Act of 1916 she was precluded by that Act from enforcing any right to the goods.

The county court judge gave judgment for the claimant. He said: "I find that there was a genuine sale, followed by actual and not nominal possession taken by claimant before the execution was levied."

The execution creditor appealed.

The Div. Ct. dismissed the appeal. **DANIEL v. ROGERS. FANTINI, CLAIMANT**

Div. Ct. [1917] W. N. 375

TRADE NAME—*continued.*

"Mattamac"—Waterproof goods—Action for injunction—Defendants supplying their own goods without explanation in response to orders for "Mattamac" goods—Injunction granted with costs of action.

P. Brothers sold waterproofs as "Mattamac," which word was their registered trade mark. They sent test or trap orders to V. & Co. for "Mattamac" goods which V. & Co. executed by sending their own goods without explanation. P. Brothers brought an action against V. & Co. for an injunction. The defts. contended that the persons giving the orders ought to examine the goods supplied to see if they bore the name "Mattamac," and if they did this they would not be deceived:—

Held, that an injunction should be granted, with costs, to restrain the defts. from selling or offering for sale any waterproofs not being the plt.'s goods as "Mattamac," and from in any other way passing off waterproofs not being the plt.'s goods as and for the plt.'s goods. **PEARSON BROTHERS v. VALENTINE & Co.**

Peterson J. 34 R. P. C. 267

Similarity—Probability of confusion—Injunction—Basis of jurisdiction.

The Court has jurisdiction to restrain a deft. from using a trade name colourably resembling that of the plt. if the deft.'s name, though innocently adopted, is calculated to deceive either (a) by diverting customers from the plt. to the deft., or (b) by occasioning a confusion between the two businesses, e.g., by suggesting that the deft.'s business is an extension, branch, or agency of or otherwise connected with the plt.'s business.

Decision of Astbury J. [1917] W. N. 89 affirmed. **EWING v. BUTTERCUP MARGARINE Co.** - C. A. [1917] 2 Ch. 1; 86 L. J. (Ch.) 441; 34 R. P. C. 232; 117 L. T. 67; [1917] W. N. 158; 33 T. L. R. 321; 61 S. J. 443

Similarity of businesses—"Albion"—Action to restrain use of "Albion" by defendants—Makers of motor car engines and chassis—Makers of motor car bodies and repairers—Confusion—Title implying connection with plt. company—Injunction granted.

The plt. co., incorporated in 1902, acquired the business of a firm which had carried on business as the Albion Motor Car Co. in a large way as makers of engines and chassis of commercial and other motor cars, their goods being identified and known to the trade by the name "Albion," for which they had two trade marks. If the plt. were ordered to supply a motor car the body of the car would be supplied by other makers, and the car sold under the plt.'s responsibility. The deft. co. was incorporated by four persons in May, 1916, to take over the business of a carriage and motor body builder carried on at Albion Gardens, Hammersmith. The defts. did not make motor cars or manufacture engines or chassis. The plt. alleged that the use of the word "Albion" in the title under which the deft. co. was incorporated was calculated to deceive and lead to the belief that the deft. co. was a branch of or

TRADE NAME—*continued*.

connected with the plt. co., and they requested the deft. co., as carrying on a business substantially the same in character as the plt. co.'s business, to cease the use of the word "Albion" in connection therewith. This the deft. co., relying on the decision in *Dunlop Pneumatic Tyre Co. v. Dunlop Motor Co.* [1907] A. C. 430, refused to do, and the plts. brought an action claiming an injunction:—

Held, following the decision of the C. A. in *Ewing v. Buttercup Margarine Co.* ([1917] 2 Ch. 1), that the deft. co.'s business had not been proved to be the same class of business as that of the plt. co., yet the probability of confusion between the two cos., both being connected with the motor car industry, was proved; an injunction was granted, delivery up and damages being waived; the deft. co. was given two months to change its name. **ALBION MOTOR CAR CO. v. ALBION CARRIAGE AND MOTOR BODY WORKS, LD.** - Astbury J. 34 B. P. C. 257; 33 T. L. R. 346

TRADING WITH THE ENEMY.

See **ALIEN ENEMY**, col. 17; **EMERGENCY LEGISLATION**, col. 155, and **SALE OF GOODS**, col. 371.

TRAFFIC—Extraordinary—Highway.

See **HIGHWAY**, col. 190.

TRANSACTION HARSH AND UNCONSCIONABLE—Money-lenders Act, 1900.

See **BANKRUPTCY**, col. 62.

TRANSFER—Action—High Court.

See **SHIPPING**, col. 392.

—Goods.

See **PRIZE COURT**, col. 327.

—Sale—Stamp duty.

See **AUSTRALIA**, col. 53.

—Shares—Company.

See **COMPANY**, col. 96.

TRANSFERABILITY—Maritime lien.

See **SHIPPING**, col. 415.

TRANSHIPMENT.

See **PRIZE COURT**, col. 319, and **SHIPPING**, col. 395.

TRANSIT—Goods in—Transfer—Apprehension of war.

See **PRIZE COURT**, col. 328.

TRANSPORT—Enemy "armed ship."

See **PRIZE COURT**, col. 329.

TRAVELLER—Right to commission after agency determined—Contract—Illegality—Suspension—Dissolution.

See **PRINCIPAL AND AGENT**, col. 312.

TRAVELLING EXPENSES—County court—Judgment debtor—Return fare.

See **COUNTY COURT**, col. 120.

TRAWLERS—Services rendered by—Salvage.

See **SHIPPING**, col. 417.

TREASON.

See **CRIMINAL LAW**, col. 133.

TREASURY—Loan of securities to.

See **CAPITAL OR INCOME**, col. 76.

TREE—Highway, fallen across—Liability of occupier of land.

See **HIGHWAY**, col. 191.

—Highway—Spiked guards—Personal injury.

See **NEGLIGENCE**, col. 289.

—Overhanging—Landlord and tenant—Lessor's duty to lessee.

See **NUISANCE**, col. 291.

TRESPASS—*Adjoining occupiers of farms held from same landlord—Agreements with landlord to keep fences on respective farms in repair—Fence on one farm out of repair—Horses from other farm straying through gap in fence—Injury to colt belonging to occupier whose fence is out of repair—Right to recover damages from owner of straying horses.*

The plt. and deft. occupied adjoining farms, which they rented from the same landlord, their tenancies having commenced on the same day. A fence upon the plt.'s farm which, under his agreement of tenancy, he was liable, as between himself and the landlord, to keep and leave in good repair, and which divided the farms, became out of repair, with the result that two of the deft.'s horses escaped from a field forming part of the farm occupied by him into a field forming part of the farm occupied by the plt. and injured a colt belonging to him. The deft. had entered into an agreement with the landlord, in terms similar to that of the plt., to keep in repair the fences on his holding:—

Held, that the deft. was liable to the plt. in damages for the injuries caused to the plt.'s colt, inasmuch as the general principle that owners of animals must keep them upon their land at their peril applied, and the mere fact that the plt. had committed a breach of the obligation he was under as between himself and the landlord to repair the fence was not enough to bring the case within the exception of damage caused by the plt.'s own default recognized by the Court of Exchequer Chamber in *Fletcher v. Rylands* (1866) L. R. 1 Ex. 265; affirmed in the H. L. (1868) L. R. 3 H. L. 330. *HOLGATE v. BLEAZARD* Div. Ct. [1917] 1 K. B. 443; 86 L. J. (K. B.) 270; 115 L. T. 788; 33 T. L. R. 116

Possession, when sufficient to support action.

The plt. bought a crop of turnips in a field, with a proviso that half the crop should be consumed on the land, and the deft. bought a crop of grass in an adjoining field from the same vendor. The plt. was alleged to have left the gate open, and some of the sheep went through it and ate some of the turnips. On subsequent days all the sheep went into the turnip field but not by the gate. In an action for damages:—
* *Held*, that the proviso that half the turnips should be consumed on the land did not prevent the plt. from suing, as the proviso did not prevent him from having the temporary pro-

TRESPASS—continued.

party in the soil, and that although, if the plt. left the gate open on the first day, he could not recover damages for that day, yet this would not alter the duty of the deft. to keep his sheep from straying on the other days, and the plt. was entitled to damages in respect of the other days.
WELLAWAY v. COURTIER - Div. Ct. [1917]
W. N. 368 ; 34 T. L. R. 115 ; 62 S. J. 161

TRIAL—Husband and wife—Disputes as to property—Originating summons.
See HUSBAND AND WIFE, col. 195.

TRIBUNAL—Appeal—Military service.
See ARMY, col. 45.

TRIBUNAL OF APPEAL—Building line in London.
See LONDON, col. 265.

TRUST.

Breach, col. 443.

Chattels. *See HEIRLOOMS*.

Express Trust. *See LIMITATIONS, STATUTES OF*.

Foreign Court, col. 444.

Guarantee Society. *See below, Resulting Trust*.

Legacy. *See WILL*.

Resulting Trust, col. 444.

Sale. *See CONVERSION*.

Settlement, col. 444.

Breach.

Settlement—Holding purchased under the Land Purchase Acts—Purchasing tenant a limited owner—Sale by the Irish Land Commission to recover arrears of annuity—Collusion between purchasing tenant and purchaser at sale—Purchaser declared a trustee for the persons entitled in remainder.

A. and B. (his wife) were entitled under a settlement to lands held under a tenancy from year to year for their joint lives. A. and B. purchased the holding under the provisions of the Purchase of Land (Ireland) Acts, and they were registered as limited owners thereof under the provisions of the Local Registration of Title (Ireland) Act, 1891. With a view to making title to the absolute interest in the lands they allowed the purchase annuity to run into arrear, and on the lands being put up for sale by the Irish Land Commission the deft., who was privy to the transaction, bought them for a sum sufficient to cover the outstanding arrears of the annuity. The plt. represented the persons entitled in remainder under the settlement:—

Held, that A. and B. had been guilty of a breach of trust amounting to a fraud to which the deft. had been a party, and that the deft. must be held to be a trustee of the lands for the plt. **HARREY v. GURRY** - O'Connor M.B. (Ir.) [1917] 1 I. R. 371

TRUST—continued.**Chattels.**

— *Heirlooms*.

See HEIRLOOMS, col. 186.

Express Trust.

— *Annuity charged on real and personal estate.*
See LIMITATIONS, STATUTES OF, col. 254.

Foreign Court.

Proceedings in—Action for administration—Interlocutory injunction.

In an action for the administration of the trusts of a deed the Court granted to the plt., until the trial of the action, an injunction restraining the deft. from taking proceedings in the American Courts to set aside the trusts, as any valid defence that the deft. might have could be raised in the present action. **HEILMANN v. FALKENSTEIN** - Astbury J. 33 T. L. R. 383

Guarantee Society.

See below, Resulting Trust, col. 444.

Legacy.

— *Interest*.

See WILL, col. 473.

Resulting Trust.

Co-ownership—Individuals or class—Association to secure particular benefits to members—Association intended to be permanent—Purpose obsolete—Surplus funds—Bona vacantia.

Where a fluctuating body of persons contribute to a fund vested in trustees, and intended to be permanent, for the purpose of performing a particular service for the contributors for the time being, and the need for that service comes to an end, the surplus of the contributed fund, after all the services provided by the trust have been performed, belongs to the class of contributors ascertained at the date when the purpose of the fund comes to an end in proportion to their contributions, and neither past contributors nor the Crown have any interest. *In re CUSTOMS AND EXCISE OFFICERS' MUTUAL GUARANTEE FUND*. **ROBSON v. ATT.-GEN.**

Astbury J. [1917] 2 Ch. 18 ; 86 L. J. (Ch.) 457 ; 117 L. T. 86 ; 33 T. L. R. 311

Sale.

Foreclosed land.

See CONVERSION, col. 113.

Settlement.

Construction—Equitable interests in realty—No words of limitation—Trust to convey—Period of distribution.

By a marriage settlement real property was conveyed to a trustee upon trust, after the solemnization of the marriage, to permit the wife to receive the rents for her life, then to permit the husband to receive the rents for his life, should he survive, then upon trust to convey the property to the children of the marriage subject to appointment, and in default of appointment to the children of the marriage, if more than one, share and share alike, and if only one, then to such only child, and upon further

TRUST (Settlement)—*continued*.

trust, after the death of the survivor of the husband and wife, in case there should not be any issue of the marriage, to convey the property to S. and G., sisters of the wife, their and each of their heirs, executors, administrators, and assigns, and if either of them should die leaving issue then upon trust to convey the share of her so dying to her issue, if more than one, share and share alike, and upon trust after the decease of the survivor of the wife, husband, S., and G., without issue of any of them, to convey the property unto the children of the late H. B., if more than one, share and share alike, and if only one such child, the whole to such only child. There was no issue of the marriage. S. and G. died unmarried. Both they and the husband died in the lifetime of the wife. She subsequently died. There were ten children of H. B. living at the date of the settlement, eight of whom survived the wife:—

Held, that, under the trusts of the deed, the trustee was only bound to convey once, namely, on the death of the survivor of the two tenants for life, and, accordingly, that the children of H. B. who were alive at the time of the death of the wife were entitled to call for a conveyance.

O'Mahoney v. Burdett (L. R. 7 H. L. 388) considered. *In re COLLES' ESTATE* - *Wylie J.* [1917] 1 I. R. 260

See SETTLEMENT, col. 389.

TRUSTEE—Bankruptcy.

See BANKRUPTCY, col. 64.

Costs, charges, and expenses—*Costs of litigation*—*Costs properly incurred*—*Lease*—*Dilapidations*—*Unsuccessful action*—*Failure to consult co-trustee*—*Withholding information*—*Exceptional circumstances*.

Under a settlement and family arrangement one of the respondents was entitled to an annuity charged upon a term of 1000 years comprising a settled house, which house had been put to a use which had given rise to structural weaknesses and had been the subject of a determinable lease. The applicant D. was one of the two trustees of the settlement. On the determination of the lease, questions of damages for dilapidations and arrears of rent were made the subject of an action against the lessees in 1915 in which D. claimed 193*l.*, and which was instituted without communication to his co-trustee or the beneficiaries. The lessees paid 110*l.* into Court after refusal by the applicant of an offer that the surveyors of the parties should meet. After an inquiry the applicant was awarded 90*l.* damages, and the trustees were ordered to pay the tenants' costs of the action incurred after the payment into Court. After the date of payment into Court D. had consulted counsel, who advised that builders' estimates should be obtained. Three builders respectively specified that the repairs would cost sums between 168*l.* and 175*l.* 4*s.* 8*d.*, and the applicant was advised to proceed with the action. He did so proceed without consulting the beneficiaries. The annuity was two years in arrear. D. as trustee and mortgagee claimed that he should be indemnified in respect of his costs and expenses out of the trust estate by

C.C.D.

TRUSTEE—*continued*.

the sale or mortgage of the hereditaments subject to the term and against the balance due to him as trustee, including costs, charges, and expenses properly incurred, and the costs of the K. B. D. action in excess of 18*l.* 16*s.* 4*d.* allowed to him for his party and party costs down to payment into Court:—

Held, that the plt. would have been better advised to accept the lessees' offer to refer the question of dilapidations to the surveyors of the parties. The position of trustees who ask for the refunding of costs of litigation is stated in *In re Beddoe* ([1893] 1 Ch. 547; 68 L. T. 595). There were no exceptional circumstances shown by D. entitling him to have the costs incurred in the action refunded out of the trust estate, except as to the excess of his solicitor and client costs over party and party costs down to the payment into Court. *In re ENGLAND'S TRUSTS*. *DOBB v. ENGLAND* - *Eve J.* 117 L. T. 466; [1917] W. N. 252

— Deed of arrangement—Costs—"Expenses properly incurred."
See BANKRUPTCY, col. 64.

— Discretion — Will—Legacy — Residue given on trust for sale—Powers to postpone and appropriate—Interest at 3½ per cent. in meantime given on legacy—Bona fide refusal of trustees to raise legacy or appropriate—Refusal proper exercise of discretion.
See WILL, col. 476.

Investment to secure annuity—*Purchase of War Loan stock*.

Edith Amy Marsh, by her will dated Sept. 29, 1915, gave her estate to be divided as follows: A sum to bring in 10*s.* a week to a person named, during her lifetime; "a sum to bring in up to 100*l.* per year to Lydia Johnson Needham." The testatrix then disposed of some jewellery, gave her residue to charities, and appointed executors. She died in Apr., 1916, and administration with the will annexed was granted to the plts., who took out an originating summons raising (among other questions) the question whether L. J. Needham was entitled to be paid such a capital sum as would, at the time of payment thereof, be sufficient, if invested in Government securities, to produce an annual income of 100*l.*

Sargant J. declared that Miss Needham was entitled to be paid such a capital sum as would have been sufficient to purchase, at the end of one year from the death of the testatrix, at the middle price of that day, 2000*l.* 5 per cent. War Loan stock, and to interest from that date. *In re MARSH*. *RHY'S v. NEEDHAM* - *Sargant J.* [1917] W. N. 373; 62 S. J. 141

— Loan of securities to Treasury.
See CAPITAL OR INCOME, col. 76.

— Marriage settlement—Covenant to settle wife's after-acquired property.
See SETTLEMENT, col. 385.

— Mortgage—Payment of income to mortgagor—Judicial Trustees Act, 1896.
See MORTGAGE, col. 282.

TRUSTEE—*continued*.

— Settled land—Appointment.
See SETTLED LAND, col. 384.

— Solicitor.
See COSTS, col. 118, SOLICITOR, col. 423,
and WILL, col. 462.

TRUTH—Statement—Insurance.
See INSURANCE (BURGLARY), col. 201.

TUBERCULOSIS — Latent — Sprained wrist
— Infection — Total disablement —
“Exclusively of all other causes.”
See INSURANCE (ACCIDENT), col. 201.

UBERRIMA FIDES—Ex parte application.
See REVENUE, col. 360.

ULTIMATE ENEMY DESTINATION — Prize
Court.
See PRIZE COURT, col. 319.

ULTRA VIRES—Company.
See COMPANY, col. 86.

UNATTESTED ITALIAN WILL — Exercise of
power of appointment by.
See POWER OF APPOINTMENT, col. 308.

UNBROKEN COLT—Highway—Injury caused
by.
See NEGLIGENCE, col. 287.

UNCERTAINTY — Will — Gift of surplus—
Charity.
See CHARITY, col. 80.

UNDERWRITERS—Notice to.
See INSURANCE (MARINE), col. 207.

UNDEVELOPED LAND DUTY.
See REVENUE, col. 363.

UNDISCHARGED BANKRUPT — Intervention
by trustee—Withdrawal.
See BANKRUPTCY, col. 64.

UNDUE INFLUENCE—Charges of—Trustee-
solicitor.
See COSTS, col. 118.

UNSEAWORTHINESS—Insurance (Marine).
See INSURANCE (MARINE), col. 209.

URBAN AUTHORITY — Trees planted in
highway.
See NEGLIGENCE, col. 289.

VAGRANT—Soliciting by male person—Mode
of trial—Defendant's right to a jury.
See JUSTICES, col. 240.

VALUATION—Quinquennial—London.
See RATES, col. 345.

— Shares.
See COMPANY, col. 95.

— Surveyor—Fees—Ryde's Scale.
See CONTRACT, col. 111.

VALUATION LIST.
See RATES, col. 346.

VALUATION (METROPOLIS) ACT, 1869.
See RATES, col. 345.

VALUE—Compulsory purchase.
See COMPENSATION, col. 101.

— Non-disclosure to purchaser of knowledge as
to.
See SOLICITOR, col. 423.

— Rateable.
See RATES, col. 345.

— Salvaged ship—Basis of valuation.
See SHIPPING, col. 416.

— Vessel—Collision—Total loss by.
See SHIPPING, col. 413.

VENDOR AND PURCHASER.

Alien Enemy. See ALIEN ENEMY.

Auction, col. 448.

Contract, col. 449.

Solicitor. See SOLICITOR.

Specific Performance. See SPECIFIC
PERFORMANCE.

Statute of Frauds, col. 452.

Title, col. 452.

Alien Enemy.

See ALIEN ENEMY, col. 20.

Auction.

*Sale in lots—Purchase of two lots—Separate
contracts—Innocent misrepresentation by vendor
as to second lot—Purchaser's right to rescind as to
both lots—Liability to specific performance as to
first lot.*

Where a purchaser separately acquires two
lots of property at an auction, in reliance on an
innocent misrepresentation of the vendor as to
the second lot, entitling the purchaser to
rescission as to that lot, he cannot also rescind
the contract for the first lot, unless from the
circumstances known and understood by both
parties at the time of sale the Court can infer
that the two transactions were to the knowledge
of both interdependent.

If, however, the Court is satisfied that, apart
from the misrepresentation, the particular pur-
chaser would not have bought either lot, it will
refuse the vendor specific performance as to the
first lot.

Casamajor v. Strobe (1834) 2 My. & K. 705,
724—731, and *Dykes v. Blake* (1838) 4 Bing.
N. C. 463, 477, discussed and explained. *HOLLI-
DAY v. LOCKWOOD* - - Astbury J. [1917]
2 Ch. 47; 86 L. J. (Ch.) 556; 117 L. T. 265;
[1917] W. N. 165; 61 S. J. 525

*Sale of incumbered lands by the Court—Re-
opening biddings—Auctioneer appointed by Court
—Mistake—Innocent misrepresentation by auc-
tioneer as to value of property sold—Confirmation
of sale—Re-sale—Sale of Land by Auction Act,
1867 (30 & 31 Vict. c. 48).*

At a sale of lands under the order of the
Court by an auctioneer appointed by the Court,
the latter, owing to an innocent mistake on his
own part, stated the amount of certain conacre
lettings which had been made of portion of the

VENDOR AND PURCHASER (Auction)—*contd.*

lands sold, and which was to belong to the purchaser, to be 146*l.* 6*s.* 9*d.*, whereas the true figures were 332*l.* 12*s.* 1*d.* The mistake was not discovered until after the sale, at which M., the present appellant, was declared the highest bidder for 4300*l.*, and he paid his deposit on the purchase-money. This bid exceeded the reserve price fixed by the Court. D., who had bid 4260*l.* at the sale, then increased his offer to 5000*l.* The chief clerk refused to issue his certificate confirming the sale until the matter had been brought before the Court, and on an application for directions the M.R. directed the lands to be again put up for sale, D. undertaking at such resale to make an initial bid of 5000*l.* :—

Held by the C. A. (Ir.), affirming the order of the M.R., that the error was one by an officer of the Court acting as such; that there had been improper conduct in the management of the sale within s. 7 of the Sale of Land by Auction Act, 1867; and that, apart from the latter section, the Court had power under its general jurisdiction to refuse to confirm the sale in the circumstances which had arisen. *In re LONGVALE BRICK AND LIME WORKS, LD. COLQUHOUN v. LONGVALE BRICK AND LIME WORKS, LD.*

C. A. (Ir.) [1917] 1 I. R. 321

Statute of Frauds—Sale of lands—Memorandum in writing—Entry in auctioneer's book—Conditions of sale—Signature by auctioneer on day after sale—Auctioneer's authority as vendor's agent.

On a sale of lands by public auction, the note in the auctioneer's book contained particulars taken from the conditions of sale, the biddings, a statement that the lands were sold to the plt. for 2100*l.*, and the auctioneer's signature. The particulars were filled in before the sale; the rest of the note on the following morning :—

Held, that the auctioneer's note sufficiently referred to the conditions of sale to constitute with the latter a good memorandum within the Statute of Frauds.

Held, also, that the authority of an auctioneer as agent for a vendor is of a more permanent character than his authority as agent for a purchaser—the test being, was the memorandum in substance made at the time and as part of the transaction of sale? *M'MEIKIN v. STEVENSON* - - - *Ross J. (Ir.)* [1917] 1 I. R. 348

Contract.

Easement—Meaning of "et cetera"—Right of way—Form of conveyance—Exclusion of Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 6.

A contract for the sale of two plots of land, "and buildings, material, &c.," omitted any mention of a right of way thereto. The premises were described by reference to a plan, and formed part of a larger property belonging to the vendor and bounded on the north by a public high road. A farm cart track led from this high road across a field of the vendor, past the larger of the two plots sold, to the smaller plot. This cart track had been used by the former tenants of certain cottages on the smaller plot to carry coals and furniture, &c., thereto, but it was always so used by permission of the vendor or her predecessors. A public footpath ran close

VENDOR AND PURCHASER (Contract)—*contd.*

to the side of the cart track up to the smaller plot. The purchaser claimed to have inserted in the conveyance of the property an express grant of a right of way for all purposes along the cart track, or to have included in the conveyance such words as would carry the right to use the same.

Upon a summons by the vendor to have the rights of the parties determined and the form of the conveyance settled by the judge :—

Held, upon the construction of the contract, that the words "et cetera" referred to "material," and were limited to something of the same character and did not carry the right of way; but if the words could be extended to include property of the same nature and character as "land and buildings," the most they could be held to include would be rights appurtenant to land and buildings.

Held, further, that the contract was one for the sale of the premises with such rights of way only as were legally appendant or appurtenant thereto, and that the right of way claimed, not being appurtenant to the land and buildings, or a way of necessity, did not pass.

Held, therefore, in the result, that the purchaser was not entitled to any express grant of the right of way, and the conveyance should also contain a proviso excluding the operation of the 6th section of the Conveyancing Act, 1881.

Bolton v. Bolton (1879) 11 Ch. D. 968 and *In re Peck and London School Board* [1893] 2 Ch. 315 followed. *In re WALMSLEY AND SHAW'S CONTRACT* - - - *Eve J.* [1917] 1 Ch. 93; 86 L. J. (Ch.) 120; 115 L. T. 670; [1916] W. N. 365; 61 S. J. 86

Ground rents—Misdescription—Rescission—"Misstatement or error in the description of the premises"—Substantial or material.

In deciding whether a purchaser is getting substantially that which he bargained for, the Court is bound to consider every incident by which the property offered to be assured can be differentiated from that contracted for. If the sum of these incidents really alters the subject-matter, then the purchaser can repudiate the contract; if, on the other hand, the subject-matter remains unaffected or so little affected as to be substantially that which was agreed to be sold, then the purchaser must be held to his contract.

By an agreement in writing a vendor agreed to sell, and a purchaser agreed to purchase, thirteen freehold houses let on six leases for a term of ninety-nine years at ground rents amounting in the aggregate to 72*l.* One pair of houses was described in the contract as let at one entire rent of 11*l.* 10*s.*, each of the next four pairs at one rent of 11*l.*, and the last three houses at one rent of 16*l.* 10*s.* The title shown was for twelve houses at a rent of 5*l.* 10*s.* each, and one at a rent of 6*l.*, each of such rents issuing out of and secured by one of the thirteen houses instead of the six rents described in the agreement. The agreement contained a provision that "if there be any misstatement or error in the description of the premises" no compensation should be allowed or the sale annulled.

In an action by the purchaser for rescission

VENDOR AND PURCHASER (Contract)—contd.

of the contract and a return of the deposit on the ground of misdescription:—

Held, that the property which the vendor offered to convey was substantially different from that which the purchaser contracted to buy; that the clause providing that a misstatement or error should not annul the contract did not apply; and the purchaser was entitled to rescission and a return of his deposit. *LEE v. RAYSON* - - - Eve J. [1917] 1 Ch. 613; 86 L. J. (Ch.) 405; 116 L. T. 536; [1917] W. N. 86; 61 S. J. 368

Open contract to purchase land—Specific performance—Decree—Inquiry as to title—Objections—Purchaser's knowledge of incurable defects—Vendor's right to adduce evidence after decree—Admissibility of evidence.

Upon an inquiry as to title under an ordinary decree for specific performance of an open contract to purchase land the vendor is entitled to adduce evidence to show that the purchaser, when he entered into the contract, knew of the existence of incurable defects in the title.

Decision of the Vice-Chancellor of the County Palatine of Lancaster reversed. *ALDERDALE ESTATE Co. v. McGRORY* - - - C. A. [1917]

1 Ch. 414; 86 L. J. (Ch.) 368; 116 L. T. 391; [1917] W. N. 48

Open contract—Title deeds common to two estates—Purchaser of one estate—Deeds held by third party having no interest—Acknowledgment for production.

In re JENKINS AND COMMERCIAL ELECTRIC THEATRE Co.'s CONTRACT - - - Neville J. [1917] W. N. 49; 61 S. J. 283

Sale of real estate—Mortgage on property sold and other property—Inability of vendor to redeem or obtain release from mortgage and to complete purchase—Purchaser's right to general damages for loss of bargain.

Testator had agreed to sell real property which, with other property, was subject to one mortgage. After his death the title was accepted by the purchasers; but the mortgagees refused to release the property sold from their mortgage, and the executors of the vendor had not enough funds of the estate for redemption of the mortgage:—

Held, that the liability to the purchasers was not limited to the costs of investigating the title, but that they were entitled to general damages for loss of bargain.

In such a case the absence of wilful default and bad faith is immaterial.

Bain v. Fothergill (1874) L. R. 7 H. L. 158 distinguished. *In re DANIEL. DANIEL v. VASSALL* - - - Sargant J. [1917] 2 Ch. 405; 117 L. T. 472; [1917] W. N. 235; 33 T. L. R. 503; 61 S. J. 646

Solicitor.

— *Trustee.*

See SOLICITOR, col. 423.

Specific Performance.

— *Agreement for lease—Memorandum—Payment of rent in advance—Part performance.*

See SPECIFIC PERFORMANCE, col. 425.

VENDOR AND PURCHASER—continued.

Statute of Frauds.

See above, Auction, col. 448, and **SPECIFIC PERFORMANCE**, col. 425.

Title.

— *Inquiry as to.*

See above, Contract, col. 451.

Settled estate—Abstract—Leases—Tenancy agreements and conveyances reserving minerals prior and subsequent to commencement of title—Practice—Delivery of copies of deeds and originals.

By a settlement of Jun. 28, 1895, B. was tenant for life of an estate including a large number of agricultural holdings and mineral properties. B. and his predecessors in title before the settlement had sold the surface of parts of the mineral properties, reserving the minerals, and B. sold other parts with a like reservation subsequent to the settlement. By an agreement of Sept. 27, 1915, B. agreed to sell the estate subject to the approval of the Court. The title was to commence with the settlement, and the prior title was not to be investigated except at the purchasers' expense. The date fixed for completion was May 11, 1917. An abstract was to be delivered one month after the approval of the agreement by the Court. There were about 1700 leases and tenancy agreements affecting the property, some of which were dated before, and some subsequently to, the settlement. The property was bought by the purchasers with a view to resale in parcels, some of which resales had been carried out with the concurrence of B., and others were in course of being carried out. Questions arose between B. and the purchasers as to what abstracts of the leases and tenancy agreements and of the conveyances of the surface of the mineral properties B. was bound to furnish. Difficulties arose owing to the war in procuring skilled persons to prepare the abstracts:—

Held, that B. was bound to furnish abstracts of the leases and tenancy agreements made, and of the conveyances of the surface reserving mineral rights executed subsequently to the date of commencement of title, but was not bound to furnish abstracts of the leases or such conveyances made prior to that date; that nothing in the agreement qualified such obligations; but that under present circumstances his obligations would be sufficiently discharged by supplying complete copies or the originals of the leases, tenancy agreements, or conveyances. *BOND v. BASSET* - - - Eve J. 117 L. T. 551; [1917] W. N. 278

VERDICT—*Jury*—Irregularities in revision of jury list.

See CANADA (Quebec), col. 76.

VESTED INTEREST—*Personal estate—Conversion—Forfeiture—Felony.*

See FORFEITURE, col. 181, and **WILL**, col. 472.

VIS MAJOR—*Extraordinary rainfall.*

See WATER, col. 454.

VOID OR VOIDABLE—Contract.

See **CONTRACT**, col. 112.

VOLUNTARY LIQUIDATION—Appointment of liquidator.

See **COMPANY**—**WINDING UP**, col. 99.

— **Company**—Lease—Assignment.

See **LANDLORD AND TENANT**, col. 241.

VOLUNTARY SETTLEMENT.

See **SETTLEMENT**, col. 389.

VOLUNTEER—Maritime lien—Discharge of lien by.

See **SHIPPING**, col. 415.

— Master and servant—Common employment.

See **MASTER AND SERVANT**, col. 272.

— Next of kin—Marriage settlement.

See **SETTLEMENT**, col. 386.

VOTE—Secured creditor.

See **BANKRUPTCY**, col. 63.

VOTING—Proxy—Company—Meeting.

See **COMPANY**, col. 91.

WAGES—Alteration in rate of.

See **WORKMEN'S COMPENSATION**, col. 510.

— Seamen's.

See **SHIPPING**, col. 418.

WAIVER—Ambassador—Privilege.

See **INTERNATIONAL LAW**, col. 216.

— Breach of condition—Sale of goods.

See **SALE OF GOODS**, col. 377.

— Forfeiture.

See **LANDLORD AND TENANT**, col. 248.

— Notice—Invalidity.

See **LOCAL GOVERNMENT**, col. 263.

— Vendor—Right to repudiate contract.

See **SOLICITOR**, col. 423.

WAR.

See **ALIEN ENEMY**, **EMERGENCY LEGISLATION**, **INSURANCE**, **PRIZE COURT**, **SHIPPING**, and **SALE OF GOODS**.

WAR RISK—Insurance.

See **INSURANCE (MARINE)**, col. 209, and **SHIPPING**, col. 404.

WAREHOUSE—Seizure in.

See **PRIZE COURT**, col. 322.

WARLIKE OPERATIONS.

See **SHIPPING**, col. 407.

WARRANTY—Breach—Defence.

See **COUNTY COURT**, col. 120.

— Condition.

See **CONTRACT**, col. 111.

— Insurance (Marine).

See **INSURANCE (MARINE)**, col. 212.

WARSHIPS—Enemy—Destruction of—Prize bounty.

See **PRIZE COURT**, col. 329.

WATER—Floods—Tort—Damage to property—Reparation—Erection of opus manufactum in bed of stream—Interference with natural course of stream—Extraordinary rainfall—Vis major.

It is the duty of any one who interferes with the course of a stream to see that the works which he substitutes for the channel provided by nature are adequate to carry off the water brought down even by extraordinary rainfall, and if damage results from the deficiency of the substitute which he has provided for the natural channel he will be liable.

A municipal authority, in laying out a park, constructed a concrete paddling pond for children in the bed of a stream and altered the course of the stream and obstructed the natural flow of water therefrom. Owing to a rainfall of extraordinary violence the stream overflowed at the pond, and, as the result of the operations of the authority, a great volume of water, which would have been carried off by the stream in its natural course without mischief, poured down a public street into the town and damaged the property of two ry. cos. :—

Held, that the extraordinary rainfall was not a damnum fatale which absolved the authority from responsibility, and that they were liable in damages to the ry. cos.

Kerr v. Earl of Orkney (1857) 20 D. 298 applied.

Nichols v. Marsland (1875-6) L. R. 10 Ex. 255; 2 Ex. D. 1 distinguished.

Interlocutors of the First Division of the Ct. of Sess. in Scotland affirmed. *CORPORATION OF GREENOCK v. CALEDONIAN RY. CO. CORPORATION OF GREENOCK v. GLASGOW AND SOUTH-WESTERN RY. CO.*

H. L. (Sc.) [1917] A. C. 556; 86 L. J. (P. C.) 185; 15 L. G. R. 749; 117 L. T. 483; [1917] W. N. 262; 33 T. L. R. 531; 81 J. P. 269; 62 S. J. 8

Supply — Beerhouse — Supply by measure — Building used partly as dwelling-house and partly for trade purposes — Water used for domestic purposes — Ilkeston and Heanor Water Act, 1901 (1 Edw. 7, c. ccl.), ss. 80, 83.

A local Water Act provided that the water authority should at the request of the occupier of a dwelling-house furnish a sufficient supply of water for domestic purposes at certain specified rates per annum, and the Act further provided that the water authority was not bound to supply with water otherwise than by measure any building used partly as a dwelling-house and partly for a trade purpose :—

Held, that the authority was not bound to supply water otherwise than by measure to the occupier of a dwelling-house who carried on thereon the business of a beerhouse keeper, notwithstanding that the water was used solely for domestic purposes.

Oddenino v. Metropolitan Water Board [1914] 2 Ch. 734 followed; *Metropolitan Water Board v. Avery* [1914] A. C. 118 distinguished. **BARRETT v. ILKESTON CORPORATION - Bailhache J.** [1917] 1 K. B. 827; 86 L. J. (K. B.) 919; 15 L. G. R. 820; 116 L. T. 593; 81 J. P. 133

WAY—Right of—Harbour formed under Act of Parliament—Public right of access to harbour—

WAY—continued.

Road constructed thereto by company formed under the Act—Obstruction not for the purpose of impeding the public highway—User.

Obstruction of an alleged public highway by acts which are not done for the purpose of asserting the right to obstruct are not obstructions for the purpose of impeding the public highway.

Where a definite right was conferred by an Act of Parliament on the public of access to a harbour, and the harbour had fallen into disuse, and leave to any member of the public, and not to any one section of the public only, to use the road leading to the harbour was admitted, and the obstruction of the alleged highway put in evidence had not been for the purpose of asserting a right to prevent the user of the highway:—

Held, that the harbour having ceased to be used, and the public having since that cessation been permitted indiscriminately to use the way, the conditions under which a section of the public came down to the harbour, i.e., by payment of tolls, &c., were removed, and the public generally were free to use the way to the harbour.

If persons who own land over which a track passes, and over which a considerable section of the public have a right of passage, choose to leave all sections of the public free to go over that track, without any attempt to discriminate at all, they must be deemed to have allowed it to become a public highway.

Att.-Gen. v. Esher Linoleum Co. [1901] 2 Ch. 647 applied.

The test is whether the conduct of the parties who could have prevented the user has induced a reasonable belief on the part of the public that the road in question is a highway.

Grand Surrey Canal v. Hall (1840) 1 M. & C. 392 applied. *Att.-Gen. v. Hemingway*

Sargant J. 15 L. G. R. 161; 81 J. P. 112

— Right of—Vendor and purchaser.

See **VENDOR AND PURCHASER**, col. 449.

"WEEKLY PAYMENT."

See **WORKMEN'S COMPENSATION**, cols. 508, 511.

"WEIGHT, MEASURE, QUALITY, CONTENTS AND VALUE UNKNOWN."

See **SHIPPING**, col. 393.

WILFUL OBSTRUCTION—Highway.

See **HIGHWAY**, col. 191.

WILL.

Accumulations, col. 456.

Advances, col. 457.

Ambiguity—

"All my monies," col. 458.

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Accumulations.

Life interest terminable on bankruptcy—As if life tenant were "then actually dead"—Acceleration of interest—Residue—Intestacy.

A testator devised his real estate and impure personalty upon trust for sale and conversion, and directed the proceeds to be held as to one third part to pay the income to his own son for life, and after his death upon trust for his issue, and in default of issue upon trust to pay the income to his daughter for life, with remainders over; and he gave the residue of his pure personal estate in remainder to certain charities. He gave the son power by will to appoint the

WILL (Accumulations)—continued.

income of the share to which he was entitled for life to any widow who might survive him for life, and declared that if the son should become bankrupt the trusts for payment of income to him should immediately cease and determine in the same manner "as if he were then actually dead." The son became bankrupt, was married, but had no issue; and in 1888 North J. directed that the income should be accumulated till it appeared who was entitled to it. Twenty-one years having elapsed since the bankruptcy, questions arose as to who was entitled to the accumulations and the future income during the son's life. The daughter claimed that her life interest expectant on the son's death had been accelerated:—

Held, that the words "actually dead" did not mean dead for all purposes, but only that the son was no longer capable of himself taking any interest, and that the daughter's life interest was not accelerated, and that the accumulations and income during the lifetime of the son, so far as they arose from the proceeds of real estate and impure personality, were undisposed of and passed to the heir-at-law and next of kin respectively, and, so far as they arose from pure personality, passed under the residuary bequest.

In re Vernon, Garland v. Shaw (1906) 95 L. T. 48 approved and followed. *In re COOPER, TOWNEND v. TOWNEND*

Younger J. 86 L. J. (Ch.) 507; 116 L. T. 760; [1917] W. N. 145; 61 S. J. 444

Advances.

Hotchpot clause—Settled shares—Debts owing by life tenants to be brought into hotchpot and treated as part of settled shares—No implied release of debts.

In re BARKER. GILBEY v. BARKER

Artbury J. [1917] W. N. 344; 62 S. J. 142

Son—Residue—Bequests to children—Direction in codicil to bring into hotchpot "advances appearing in books of account"—Entries in books before and after date of codicil.

A testator, who died in 1915, by his will made in 1909 and a codicil made in 1913, settled his residuary estate, subject to his wife's interest therein, upon trusts in equal thirds for his three children who survived him. By the codicil he directed that all sums of money appearing in his books of account to have been advanced by him to his son should be brought into hotchpot. There were no entries of advances in the books at the date of the will, but there were such entries between the dates of the will and of the codicil, and also after the date of the codicil. The son disputed the accuracy of the entries in the books:—

Held, that entries of advances made in the account books before the date of the codicil were incorporated in the will, but that entries made after that date were not receivable either as part of the will or as evidence, and an inquiry was directed. *In re DEPREZ, HENRIQUES v. DEPREZ* - - - Neville J. [1917] 1 Ch. 24; 86 L. J. (Ch.) 91; 115 L. T. 662;

61 S. J. 72

WILL—continued.**Ambiguity.**

"All my monies." ^a

Residuary personal estate.

Testatrix by her will bequeathed to her brother E. J. G. and her niece G. M. S. "all my monies to be equally divided between them and to the aforesaid G. M. S. all my household furniture and personal effects." At the date of the will the testatrix had at her bank 32l. 10s. 7d. and was possessed of certain furniture and effects of a value not exceeding 20s. She was also entitled to a moiety of a reversionary interest in certain investments amounting to 2430l. which was subject to a mortgage for 750l.:—

Held, that there was no sufficient context in the will to show that the testatrix had used the words "all my monies" otherwise than in their ordinary legal sense, and consequently that the gift of them did not constitute a residuary bequest of her personal estate so as to pass the reversionary interest.

Lowe v. Thomas (1854) 5 D. M. & G. 315 followed. *In re Skillen* [1916] 1 Ch. 518 distinguished. *In re GLIDDON. SMITH v. GLIDDON*

Younger J. [1917] 1 Ch. 174; 86 L. J. (Ch.) 253; 116 L. T. 13

"Any other moneys."

Gift of "moneys invested" in two companies—"And any other moneys which I may possess"—Context—Residuary clause—Reversionary interest included.

The testator gave to his infant niece money invested in two cos. "and any other moneys which I may possess and not mentioned in this will and not herein otherwise disposed of," and appointed co-trustees of those moneys. The will contained other specific and general legacies:—

Held, that the testator had used the word "moneys" in a wider sense than coin and a balance at his bankers', and the clause constituted a residuary bequest, including in it a reversionary interest to which he was entitled.

In re Buller, Buller v. Giberne, 74 L. T. 406, followed. *In re WOOLLEY. CATHCART v. EYKENS - Eve J.* 117 L. T. 511; [1917] W. N. 279

"Books, pictures, prints and other household effects."

Stamp collection—Gift of "books, pictures, prints . . . and other household effects."

A testator, by his will dated Apr. 23, 1906, bequeathed all his "books pictures prints furniture wines liquors and other consumable stores and other household effects" to his wife. He had lived in India for many years, and had there made a valuable collection of stamps, part of which was kept in albums, and the remainder mounted on cards, which were tied up in separate bundles under separate headings. In 1912 the testator came on a visit to England, and had the collection sent to him here with a view to its sale; but as it was still unsold, when he returned to India he deposited it at a bank for safe custody. It remained at the bank until after his death at the end of 1915:—

Held, reversing a decision of Eve J., that

WILL (Ambiguity)—continued.

no part of the stamp collection passed under the words of the specific bequest.

In re Fortlage, Ross v. Fortlage [1916] W. N. 214 disapproved. *In re MASSON. MORTON v. MASSON* - - C. A. 86 L. J. (Ch.) 753; 117 L. T. 548; [1917] W. N. 252; 33 T. L. R. 527; 61 S. J. 676

"Descendants."

Gift to "the descendants of A. or their descendants living at my death"—Substitutional gift—"Descendants" limited by context to "children"—Children of child dead at date of will entitled to share.

A testator gave a pecuniary legacy to "the descendants of A. or their descendants living at my death." A. had six children, one of whom was dead at the date of the will, leaving children and grandchildren, all of whom were living at the death of the testator. The other five children of A. were living at the date of the will and survived the testator. On the question of the class entitled to the legacy:—

Held, that the words "living at my death" governed the whole gift.

Held, also, that on the true construction of the will, there was a direct gift of five-sixths of the legacy to the five children of A. who survived the testator equally as tenants in common, and of the remaining one-sixth to the grandchildren of A. who survived the testator as joint tenants.

Christopherson v. Naylor (1816) 1 Mer. 320 considered. *In re HICKEY. BEDDOES v. HODGSON* - - [1917] 1 Ch. 601; 86 L. J. (Ch.) 385; 116 L. T. 556; [1917] W. N. 111; 61 S. J. 368

"Die leaving issue her surviving."

Tenant for life—Gift to issue on attaining twenty-one—Death of child after twenty-one in lifetime of tenant for life—Vested interest.

Testator, who died in Nov., 1882, by his will, made a few weeks previously, devised and bequeathed the residue of his real and personal estate to his trustees upon trust for sale, conversion, and investment, and directed that after payment of certain annuities his trustees should divide the balance of the annual income into five equal parts and pay one fifth part to each of his four daughters, naming them, of whom L. H. was one, during their respective lives, and the remaining fifth part for the benefit of the children of a deceased daughter. The testator then directed that, in case any of his said daughters should die without leaving lawful issue her surviving, or such issue should die under the age of twenty-one years, the share or shares of her so dying as aforesaid of and in the said trust premises should be held by his trustees and the annual income applied between and amongst such of his said daughters as might be then living and the issue of such of them as might be then dead, but such issue should only take per stirpes and not per capita; and upon the death of any of his said daughters leaving issue her surviving he directed that the share of such daughter so dying should be paid and divided between the issue of his said daughters on their severally attaining their respective ages of

WILL (Ambiguity)—continued.

twenty-one years if more than one in equal shares and proportions, and if there should be issue but one child, then the whole to such one child. L. H. died in Dec., 1915, a widow, having had eleven children, six of whom survived her and attained twenty-one. Of the remaining five children who predeceased her two died in infancy and three attained twenty-one:—

Held, that on the death of L. H. her one fifth share became divisible in equal shares amongst all her children then living and the legal personal representatives of those then dead who survived the testator and attained twenty-one.

The principle laid down by Turner L.J. in *Boulton v. Beard* (1853) 3 D. M. & G. 608, 612, approved of by Lord Davey in *Hickling v. Fair* [1899] A. C. 15, 35, and followed by Hall V.-C. in *In re Orlebar's Settlement Trusts* (1875) L. R. 20 Eq. 711, applied. *In re WALKER. DUNKERLY v. HEWERDINE* - - Younger J. [1917] 1 Ch. 38; 86 L. J. (Ch.) 196; 115 L. T. 708

"Heirs."

Gift of personal estate to A. "or his heirs"—Substitution.

A testator bequeathed to his wife the income of all his property during her lifetime, and directed everything to be sold at her death, and the proceeds to be equally divided, one-half among his wife's and one-half among his own relations, namely, "to S. or her heirs, to L. or her heirs, to H. or her heirs, to F. or her heirs, in four equal shares . . . ; to J. or his heirs, to C. or her heirs, and to J. or his heirs, in three equal shares." All these named relations survived the testator, but three of them died during the lifetime of the testator's wife, namely, S., who died intestate, leaving a husband and seven children, J., who left a widow and next of kin but no children, and C., who died a spinster and intestate:—

Held, (1.), that in all these gifts the word "heirs" meant such persons as would be entitled to succeed to personal property ab intestato; and, (2.), that upon S.'s death, her husband, being the person who on her death was entitled to her personal property ab intestato, took her share. *In re CUSIN. WALKER v. CUSIN* - - Barton J. [1917] 1 I. R. 63

"Monies which shall arise from sale."

Land in Ireland—Bonus under Irish Land Act, 1903 (3 Edw. 7, c. 37), s. 48; Irish Land Act, 1904 (4 Edw. 7, c. 34), s. 2.

Under a marriage settlement made in 1868, "the monies which shall arise from the sale of" certain lands in Ireland, conveyed by a contemporaneous conveyance on trust for sale, were settled upon certain trusts under which, in the events which had happened, the husband was absolutely entitled to the said moneys after the death of his wife. By his will, made in 1885, the husband, after referring to the settlement and the moneys which should arise from the sale of the land, bequeathed "all monies to arise from the sale of the before-mentioned hereditaments and which shall be capable of disposition by me" to the trustees of his will upon trust to pay thereout two legacies of 500L. each to certain

WILL (Ambiguity)—continued.

charitable institutions. The testator gave the residuo of his estate to his wife. He died in 1902, and his widow in 1912. In 1914 the lands in Ireland were sold by the settlement trustees under the Irish Land Acts, 1903 and 1904, and, after deducting from the gross purchase-moneys the sums required for the redemption of certain charges on the property and for the payment of incidental costs and expenses, the trustees of the testator's will had received and had in hand a sum of 905*l.* 4*s.* 1*d.*, which sum represented the net purchase-moneys. Besides this sum they had received and had still in hand a sum of 472*l.* 19*s.* 2*d.*, being the bonus or sum calculated at the rate of 12 per cent. on the amount of the purchase-money payable to the vendor under s. 48, sub-s. 1, of the Irish Land Act, 1903. In these circumstances there was not sufficient to pay in full the two legacies of 500*l.* each, unless resort could be had to the bonus sum of 472*l.* 19*s.* 2*d.*; and the question now before the Court was whether that sum came within the words "all monies to arise from the sale of the before-mentioned hereditaments," and was available, together with the net purchase-money, for payment of the legacies.

Peterson J. held that the bonus was "monies arising from the sale of the before-mentioned hereditaments," and under s. 2 of the Irish Land Act, 1904, had to be held on the same trusts as the purchase-money. The result was that it was available towards payment of the two legacies. *In re LIVINGSTONE. LIVINGSTONE v. DURELL*

Peterson J. [1917] W. N. 90; 61 S. J. 384

"My real estate consisting of my interest in the lands of D."

Separate disposition of personality—Beneficial interest in charges affecting the lands.

A testator possessed of real estate and entitled to the beneficial interest in certain charges upon a portion of his lands, made a devise of his real estate consisting of his interest in the lands of D. and K., and also disposed separately of his personal estate:—

Held, that the beneficial interest in the charges did not pass under the terms of the devise.

Technical expressions used in a will must be given the meaning assigned to them by law, unless the context contains a plain indication of a contrary intention.

Mackesy v. Mackesy [1896] 1 I. R. 511; *Kilkelly v. Powell* [1897] 1 I. R. 457 distinguished. *DAVY v. REDINGTON* - C. A. (Ir.) [1917] 1 I. R. 250

"My shares."

Interest of next of kin in shares of deceased intestate.

A testatrix made a bequest of "my shares in different securities":—

Held, that the testatrix's interest, as one of the next of kin of a deceased intestate, in certain shares and stock, which formed part of the unadministered estate of the intestate, did not pass under the bequest.

Vanneck v. Benham [1917] 1 Ch. 60 applied. *In re HOLMES. VILLIERS v. HOLMES*

Barton J. (Ir.) [1917] 1 I. R. 165

WILL (Ambiguity)—continued.

"Portraits."

Choice of interpretation—Ejusdem generis rule—Sufficiency of category.

By his will the testator bequeathed "all my pictures (except portraits)" to the trustees of the National Gallery, "but the portraits of myself and all my family and other portraits . . . I give and bequeath . . . to my nephew."

The C. A. held, that "except portraits" meant the portraits thereafter excepted, namely, those given to his nephew and described as "the portrait of myself and all my family and other portraits," and that the words "other portraits" meant portraits of the same category as family portraits (see 85 L. J. (Ch.) 505).

An appeal to the H. L. was withdrawn on terms. *LAYARD v. EARL OF BESSBOROUGH*

H. L. (E.) 33 T. L. R. 261

"Realize."

A will, under which the deft. took and accepted considerable benefits, contained the following provision:—"If the mortgage should be realized which E. L. O'H. (the deft.) has on the lands of S. she is to pay to her sister (the plt.) 200*l.*" The deft. instituted proceedings in the High Court of Justice, Ch. Div., to raise the amount of the mortgage, and the lands comprised in the mortgage were sold. The proceeds were insufficient to pay off the mortgage debt (1900*l.*) in full, and a sum of 182*l.* still remained due:—

Held, by the C. A. (Ir.) (reversing Barton J.), that the mortgage had not been "realized."

MASTERSON v. O'HALLORAN

C. A. (Ir.) [1917] 1 I. R. 454

Annuity.

See ANNUITY, col. 21, and LIMITATIONS, STATUTES OF, col. 254.

Gift of "a clear annuity"—Income tax payable by annuitant.

In re LOVELESS. FARRER v. LOVELESS

Eve J. [1917] W. N. 343; 62 S. J. 121

*Income tax—Direction to pay 200*l.* per annum "free of all duties" to solicitor-trustee for trouble in acting.*

Testator directed payment out of the income of his estate of 200*l.* per annum "free of all duties" to a solicitor-trustee for his trouble in acting as a trustee of his will, so long as he should continue to act as such trustee, and also in addition gave him power to charge and be paid for professional and other charges:—

Held, affirming the decision of Neville J. [1917] 2 Ch. 10, that the sum of 200*l.* was to be paid subject to and not free of income tax. *In re SAILLARD. PRATT v. GAMBLE* - C. A. [1917] 2 Ch. 401; 86 L. J. (Ch.) 749; 117 L. T. 545; [1917] W. N. 251

Charity.

See CHARITY, col. 80.

Codicil.

Gift of a collection of coins—Imperfect gift in testator's lifetime—Codicil revoking gift—

WILL (Codicil)—continued.

Erroneous assumption of fact—Revocation whether conditional or absolute.

A testator by his will made in 1901 gave all his coins with the cabinets in which they were placed to a university. In Jan., 1912, he by letter presented his "collection of coins" with the cabinets to the university on certain conditions, and they accepted the gift and conditions, but no coins or cabinets were then handed over. In February, 1912, the testator made a codicil to his will and thereby, after reciting the gift of coins and cabinets in his will, he revoked the gift and declared that he had during his lifetime handed over to the university all the coins and cabinets he intended to leave them by his will. In Aug., 1912, the testator delivered to the university eleven cabinets containing the greater part of his coins, but some remained in his possession. On the death of the testator in 1915 the university claimed the remainder of the coins as part of his gift to them on the ground that the revocation by the codicil was based on an erroneous assumption of fact and was therefore conditional and inoperative so that the original gift in the will took effect:—

Held, that the revocation by the codicil was not conditional but absolute, and that the university were only entitled to the coins and cabinets they had received in the testator's lifetime.

Held, also, that evidence of the statements made by the testator at the time the coins and cabinets were handed over was not admissible.

Campbell v. French (1797) 3 Ves. 321 and *Doe v. Evans* (1839) 10 Ad. & E. 228 discussed. *In re Churchill*. *Taylor v. University of Manchester* - *Neville J.* [1917] 1 Ch. 206; 86 L. J. (Ch.) 209; 115 L. T. 769; [1916] W. N. 404; 61 S. J. 131

Legacies to persons in testator's service at death—Testator found lunatic by inquisition—Servants engaged by committee of person—Lapse—Legacies to charities—Probate action—Charities cited and not appearing—Probate granted as term of compromise—Assent of Att.-Gen.—Charities bound by compromise.

Testator, by codicil admitted to probate under circumstances hereinafter stated, bequeathed certain pecuniary legacies to servants then in his employment, and further bequeathed to "each person in my service at my death" a sum equal to one year's wages in addition to any legacy thereinbefore bequeathed as well as to the wages then due to him or her. He gave a number of legacies to charities, and the residue of his estate upon trust for division among institutions to be selected by his trustees. On Mar. 21, 1908, he was found lunatic by inquisition, and the official solicitor was appointed committee of his person. Shortly afterwards he was removed to an establishment maintained for him under the authority of the Master in Lunacy, and O. was appointed by the committee of the person to have charge of the establishment, with authority to engage other assistance, under which O. engaged an attendant, an assistant attendant, coachman, and other servants. The testator died in 1915, and shortly after his death one of the debts.

WILL (Codicil)—continued.

commenced an action in the P. Div., claiming as heir-at-law and sole next of kin that the Court should pronounce against the codicil, and for the will and five earlier codicils under which the residue would be undisposed of. The Att.-Gen. was a party to the proceedings, and a citation was issued to the charities, which, however, did not appear. Ultimately a compromise, signed by the Att.-Gen. and other counsel, was arrived at between the parties present at the hearing, under which the sixth codicil was admitted to probate on the terms that the will and all six codicils were to be admitted to probate; that the beneficiaries under the sixth codicil were to relinquish in favour of the plt. in that action one-third of their legacies under that codicil; and that the plt. was to receive one-third of the residue of the estate in addition to the amounts relinquished in his favour. The charities were at once informed of the compromise and no complaint was ever made:—

Held, that O. and persons engaged by him in relation to the establishment were not in the testator's "service" within the meaning of the sixth codicil, and that the bequests of sums equal to one year's wages did not therefore take effect in their favour.

In re Lawson [1914] 1 Ch. 682 considered.

Held, also, that, the compromise having been assented to by the Att.-Gen. on behalf of the charities, absent by their own choice, they were bound by it.

Statement of Sir J. Romilly M.R. in *Ware v. Cumberlege* (1855) 20 Beav. 510 as to the position of the Att.-Gen. in charity matters applied.

But, even if they were not bound, yet, as they claimed to stand by the probate of the sixth codicil, not to set it aside, and as it was only admitted to probate as part of the compromise, they must, if they wished to take advantage of the agreement, bear their portion of the burden of it.

Remarks on the difficulty of working out in the Ch. Div. compromises made in the Probate Div. *In re King*. *Jackson v. Att.-Gen.*

Younger J. [1917] 2 Ch. 420; 117 L. T. 529; [1917] W. N. 266; 33 T. L. R. 535; 62 S. J. 9

Implied revocation.

Where a devise in a will is clear and unambiguous, the onus is on those alleging revocation by a codicil to show that the expression of the testator's intention to revoke is equally clear and unambiguous.

Hearle v. Hicks, 1 Cl. & Fin. 20 and *In re Stoodley* [1915] 2 Ch. 295 applied. *Pennfather v. Lloyd* - *Barton J. (Ir.)* [1917] 1 I. R. 337

Republication by—Date of will brought down to date of codicil—Substitutional gift—Extrinsic evidence.

A testator, by his will, gave to his son a power to appoint a jointure, not exceeding 200l. per annum, charged on the lands of O., to any woman the son might marry. The son, subsequently to the date of the will, having married E., the testator, by a codicil, revoked certain devises contained in the will, and directed

WILL (Codicil)—continued.

that E. should receive out of the lands of C. a jointure rent-charge of 200*l.* per annum during her life :—

Held, by Barton J., that parol evidence was admissible to show the testator's intention, and that, so far as E. was concerned, the jointure in the codicil was in substitution for, and not in addition to, the power of jointuring given by the will.

Held by the C. A., that the judgment of Barton J. should be affirmed.

Held by Sir I. J. O'Brien C., that, on the true construction of the will and codicil, the jointure given by the codicil was in substitution for that given by the will; but that extrinsic evidence as to the value of the testator's estate was not admissible, the question being one purely of construction.

Held by Ronan and Molony L.JJ., that the codicil operated as a republication of the will; that accordingly, in the absence of contrary intention, the language of the will must be construed as of the date of the codicil, and that there was no evidence of any such contrary intention.

The principle and effect of republication of a will by a codicil of later date considered. *Dicta* in *Mountcashell v. Smyth* [1895] 1 I. R. 346 discussed. *GREALY v. SAMPSON* - C. A. (Ir.) [1917] 1 I. R. 286

Death Duties.

— Estate duty — Incidence — Rateability of charge.

See REVENUE, col. 353.

Foreign assets—Estate duty—Incidence—Duty paid by English executor out of English assets—Right of English executor to recover from foreign executor—Property passing to executor "as such"—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 9, sub-ss. 1, 4.

In re SCULL. SCOTT v. MORRIS - C. A. [1917] W. N. 309

Legacies, annuities, and bequests given "free of all death duties"—Trust for sale and conversion—Direction to pay "death duties," debts, legacies, and annuities out of proceeds—Settlement of residue—Gift of life interest therein—Legacy duty thereon—Incidence.

A testator, after giving certain specific and pecuniary legacies and life annuities and making a specific devise, declared (clause 6) that "all the legacies annuities and bequests" bequeathed by his will should be given and paid free of all "death duties." He gave his residuary estate on trust for sale and conversion and directed that his trustees should pay his funeral and testamentary expenses, "death duties," debts, legacies, and annuities out of the proceeds and invest the residue thereof and hold the same upon trust to pay certain annual sums to A. and B. during the life of C., and subject thereto upon trust for C. for life, with remainder to A. and B. absolutely :—

Held, that C.'s life interest in the residue was a "bequest bequeathed by the will" within clause 6, and that the legacy duty payable in respect thereof was payable out of the corpus of the estate and not out of C.'s income.

WILL (Death Duties)—continued.

Decision of Astbury J. [1916] 2 Ch. 379 reversed. *In re KENNEDY. CORBOULD v. KENNEDY* - C. A. [1917] 1 Ch. 9; 86 L. J. (Ch.) 40; 115 L. T. 690; [1916] W. N. 364; 33 T. L. R. 44; 61 S. J. 55

Settled legacy—All duties to be paid out of and be a charge on residue—Estate duty—New duty imposed after death of testator—Testamentary expenses—Costs of administration action—Finance Act, 1914 (4 & 5 Geo. 5, c. 10), s. 14.

A testator who died in 1872 bequeathed to his trustees the sum of 10,000*l.* upon trusts for the benefit of his adopted daughter, A. T., for her life, and after her decease for her children and issue. He then directed that "all duties payable in respect of the said sum of 10,000*l.* given to my trustees upon trust for the benefit of my said adopted daughter, A. T., and her issue shall be paid out of and be a charge upon my residuary estate." And, after giving to his trustees a further sum of 10,000*l.* upon trust "to pay the income therefrom free of duty" to D. D. B. for her life, with a gift over, the testator gave the residue of his real and personal estate to his trustees upon trust to sell and convert and to stand possessed of the clear residue of the proceeds (after payment of testamentary expenses, debts, and legacies) upon trust to pay the income to A. S. for life, and after her decease to pay or transfer so much of the clear residue of his personal estate as might lawfully be given for that purpose to St. M.'s Hospital, and to be possessed of the residue (if any) of the produce of the conversion of his real and leasehold estates and so much of the clear residue of his personal estate as was not effectually disposed of by the foregoing gifts and trusts upon trust for A. T. absolutely. In 1886 an order was made for the administration of the testator's estate, and the stocks, funds, and securities representing the several funds were transferred into Court, and appropriations thereof were duly made in respect of the two trust legacies of 10,000*l.* each and in respect of the pure personalty and impure personalty constituting the residuary estate. In 1889 A. T. assigned her reversionary interest under the will to the P. Co. absolutely. In Sept., 1916, A. S. died.

On petitions presented by the P. Co. and St. M.'s Hospital respectively for payment to them of their respective shares of the funds representing the residue :—

Held, that the estate duty on the first-mentioned legacy of 10,000*l.*, which under s. 14 of the Finance Act, 1914, would become payable on the death of A. T., would have to be borne by the residuary estate. *In re TINKLER. LOYD v. ALLEN* - Younger J. [1917] 1 Ch. 242; 86 L. J. (Ch.) 177; 115 L. T. 710; [1916] W. N. 406; 61 S. J. 170

Settled legacy—Estate duty—Will—Legacies and annuity "free of legacy and succession duty and all other death duties"—Settled on successive trusts—Prospective claim for duty at termination of successive interests—Finance Act, 1914 (4 & 5 Geo. 5, c. 10), s. 14.

The testator by his will settled four trust legacies upon certain persons for life with divers

WILL (Death Duties)—continued.

remainders over. He also gave an annuity for life that was to take effect after one of the life interests in the settled funds. The will directed that "all the legacies annuities and bequests hereinbefore made by me shall be free of legacy and succession duty and all other death duties, and such duties shall be borne by and paid out of my general estate":—

Held, that on the construction of the will all the duties in respect of the pecuniary dispositions made by the testator, whether presently payable or becoming payable by reason of subsequent events happening to the property bequeathed, must be borne by the general estate.

Scumble, that in setting aside a fund out of the residue to provide for future duties, unascertainable as to amount and rate of duty, the executors must provide for the maximum amount of duty now payable. *In re PARKER. WHITE v. STEWART*

C. A. 86 L. J. (Ch.) 766; 117 L. T. 422; [1917] W. N. 233; 33 T. L. R. 501

Settled legacy—"Free of duty"—Cesser of life interest—Estate duty—Will made in 1910—Death in 1915—Direction that all "Gifts bequests and legacies" shall be "free of duty"—Finance Act, 1914 (4 & 5 Geo. 5, c. 10), s. 14.

By her will, dated Aug. 31, 1910, a testatrix, after giving certain specific and pecuniary legacies, gave (clause 8) 8000*l.* to her trustees upon trust for a life tenant and remaindermen.

By clause 9 she declared that "all the foregoing gifts bequests and legacies shall be free of duty."

By clause 10 she gave her residuary estate to her trustees upon trust for sale and conversion, and directed them, after payment (inter alia) of her legacies "and the duty on all gifts bequests and legacies bequeathed free of duty," to hold the net proceeds upon trust for two residuary legatees.

The testatrix died on Oct. 9, 1915, i.e., more than a year after settlement estate duty and the relief thereby conferred had been abolished by the Finance Act, 1914, s. 14.

The life tenant of the settled legacy died on Jul. 17, 1916, after the legacy had been set aside but before the estate was distributed:—

Held, that not only the settled legacy itself but the successive beneficial interests therein were "gifts bequests or legacies" within clause 9, and consequently the estate duty payable on the cesser of the life interest fell on residue.

In re Kennedy [1917] 1 Ch. 9 and *In re Hatch* [1916] W. N. 240 applied.

In re D'Oyly [1917] 1 Ch. 556 distinguished.

In re EVE. HALL v. EVE - - Astbury J. [1917] 1 Ch. 562; 86 L. J. (Ch.) 396; 116 L. T. 682; [1917] W. N. 101; 33 T. L. R. 251

Settled legacy—"Free of duty"—Future estate duty—Incidence—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 5, sub-s. 1—Finance Act, 1914 (4 & 5 Geo. 5, c. 10), s. 14.

A testatrix, after giving numerous pecuniary legacies "free of duty," gave to trustees "the

WILL (Death Duties)—continued.

sum of 7000*l.* free of duty" upon trust for A. for life, and after his death upon trust for his wife and children; and the testatrix gave the residue of her estate, "after payment thereof of her just debts, funeral and testamentary expenses and the duties on the thereinbefore mentioned legacies," to B. absolutely. Between the dates of the will and of the death of the testatrix s. 14 of the Finance Act, 1914, came into operation, which abolished the relief from estate duty given by s. 5, sub-s. 2, of the Finance Act, 1894, and the question arose whether the estate duty which under s. 14 of the Act of 1914 would be payable on the death of A. in respect of the legacy of 7000*l.* ought to be borne by the corpus of the legacy or by the residuary estate:—

Held, that upon the true construction of the will the words "free of duty" were limited to the duties presently payable on the death of the testatrix in respect of the legacy, and did not extend to any estate duty that might become payable on the death of A.; and that on payment of the legacy to the trustees without deduction there was no obligation to retain any part of the residuary estate for any claim that might arise for such estate duty. *In re D'OYLY. VERTUE v. D'OYLY* - - Neville J. [1917]

1 Ch. 556; 86 L. J. (Ch.) 373; 116 L. T. 442; [1917] W. N. 73; 61 S. J. 336

Debts.

Charge of debts and legacies on specific fund of personality—Primary liability of residuary personality for payment of debts.

A testator directed his executor to sell his farm, and out of the proceeds to pay certain legacies, and his debts, funeral and testamentary expenses. The balance of the proceeds of the sale he directed to be divided equally between two charities. There was no disposition of any other property:—

Held, by the C. A. (1.), affirming Barton J., that there were no sufficient grounds for exempting the undisposed of personality from its primary liability for debts, and that the debts, funeral and testamentary expenses were primarily payable thereout.

Newbegin v. Bell, 23 Beav. 386, followed. *In re M'MORREN. WALKER v. M'KAY* - C. A. (Ir.) [1917] 1 I. R. 278

Devise.*Equitable Limitations.*

Disclaimer—Acceleration of remainders.

Testator, who died in 1899, devised real estate unto and to the use of trustees in fee simple upon trust for A. (who was his heir-at-law) during his life, with remainder in trust for A.'s first and other sons successively in tail, and in default of such issue in trust for each successively of B. and C. during his life, with remainder immediately after the death of each of them in trust for his first and other sons successively in tail, and in default of such issue in trust for testator's own right heirs. The testator also bequeathed personal estate upon corresponding trusts. A. disclaimed the devises and bequests made in his favour by the will except as to any

WILL (Devise)—continued.

right to which he might become entitled as heir-at-law of the testator under the ultimate trust. A. was still living, but had no son. B. (to whom the income had been paid during his life by way of family arrangement) was now dead without issue. C. was living:—

Held, that the effect of the disclaimer by A. was to accelerate the equitable remainders until a son of A. was born, and that until that event the income of the real and personal estate was not undisposed of, but was now payable to C. during the joint lives of himself and A.

In re Scott [1911] 2 Ch. 374 and *Carrick v. Errington* (1726) 2 P. Wms. 361 (affirmed by the H. L. sub nom. *Errington v. Carrick* (1728) 5 Bro. P. C. 391) distinguished. *In re WILLIS. CROSSMAN v. KIRKALDY* - - - *Younger J.* [1917] 1 Ch. 365; 86 L. J. (Ch.) 336; 115 L. T. 916; 61 S. J. 233

Rule in Shelley's Case—Equitable life estate followed by gift to lawful issue male in succession of tenant for life—Devise to issue treated as merely introductory to subsequent limitations.

Testator, who died in 1873, by his will appointed three trustees, and devised and bequeathed to them, their heirs, executors, administrators, and assigns, all his real and leasehold estate "upon trust to receive for or permit my son W. to receive the rents, issues and profits during his life of "two specified freehold hereditaments, he keeping the same in repair and paying the expenses of insuring the same against fire, and the taxes and other outgoings affecting the same. Then followed a proviso that if W. should do or suffer anything to deprive himself of the personal enjoyment of any of the rents, &c., the trust thereinbefore declared should "immediately cease and determine," and the rents, &c., should be received by the trustees during the then residue of W.'s life, "and be applied to and for the support and maintenance or use and benefit of the lawful issue for the time being (if any) of W." as therein provided; but, if W. should have no issue then living, testator empowered his trustees to apply the income as far as possible to secure its application for W.'s personal enjoyment and prevent the same "from becoming the property of his alienees or creditors"; but if in certain circumstances (which did not happen) W. should be absent from England, testator directed his trustees until his return and afterwards to pay a weekly sum to X. and to invest and accumulate the rest of this income. Next followed a trust to "permit" testator's wife "to receive the rents, issues and profits during her life" of other freehold properties and some leasehold houses, and a trust to sell as soon as convenient after testator's decease some other leasehold properties and also (after his wife's death) the leaseholds given to his wife for life, and to pay the proceeds of one of the other leaseholds (not given to her) to his wife. Then testator declared that if W. should not be in England at the time of testator's death (an absence which did not occur), but should return within ten years, he was to have the surplus income of the property in which a life interest had been given to him and of the accumulation thereof after paying

WILL (Devise)—continued.

the weekly sum; but if W. should not have returned within the ten years testator directed his trustees to pay the surplus income and investments thereof to J. W., and "to permit and empower" him to receive the rents, &c., for his own life of the two freeholds given in trust for W. for life, subject to an annuity of 50*l.* to X. in lieu of the weekly sum. The testator said that on W.'s death, if (as happened) he should have returned, he devised the same two freeholds "unto the lawful issue male in succession of the said W., so that every elder son and his issue may be preferred to every younger son and his issue male, and so that every such son may take an estate for his life, with remainder to his first and every subsequent son successively, according to seniority, in tail male; and, on failure of such issue, to the said J. W. and his issue male," charged with the annuity to X., "for the same estates and in the same order as my said hereditaments are hereinbefore limited to the first and every subsequent son of the said W.," and, on the failure of such issue as aforesaid of W. and J. W., testator gave the lastly referred to hereditaments unto J. H., a nephew of the testator, "for his life, with remainder to his issue male, for the same estates and in the same order as the said hereditaments are hereinbefore limited to the first and every subsequent son of the said W." Then, if W. was present in England (as he was), testator in that event, on the decease of testator's wife, gave the freeholds in which she had a life interest, charged with the 50*l.* annuity, "unto the said W. for his life, but subject to the provisos and conditions aforesaid, and, subject thereto, I devise the whole of the said last-mentioned freehold . . . premises to the same persons in the same order, and in like manner as I have hereinbefore devised my other freehold estate." Testator's widow died in 1878. W. died in 1905, without having had male issue. J. W. died in 1908, without having had male issue. J. H. died in 1906, having had four sons (all born in testator's lifetime), J. E., Y. H., W. G., and S. S. died leaving a son J. S. J. E. died without issue in 1913, and Y. H. died in 1916, without male issue:—

Held, by Sargant J. and the C. A.—(1.) that, applying the doctrine of *cy pres* or approximation, the devises to W. and his male issue and to J. W. and his male issue were not void for remoteness (see *Humberston v. Humberston* (1716) 1 P. Wms. 332, and *Vanderplank v. King* (1843) 3 Hare, 1); (2.) that if W. did not take an immediate estate in tail male under the rule in *Shelley's Case* (1581) 1 Rep. 93b, there was not to be implied, in priority to the devise to J. W. and his issue, an estate in tail male in remainder to W., and that, similarly, there was not to be implied, in priority to the devise to J. H. and his issue, an estate in tail male in remainder to J. W. (*Forsbrook v. Forsbrook* (1867) L. R. 3 Ch. 93, *Neville v. Thacker* (1888) 23 L. R. Ir. 344, and *Doc v. Gallini* (1833) 5 B. & Ad. 621 distinguished); (3.) that, the life estate of W. being only equitable, and the devise to his descendants being a legal devise, W. did not take an estate tail, and that the same ruling applied in the case

WILL (Devise)—continued.

of the devisees to J. W. and his descendants; and (4.) that, in the result, J. W. became, on the death of W. without male issue, entitled to an estate for life only, and that on the death of J. E. without male issue Y. H. became entitled to an estate for life, and that on the death of Y. H. without male issue the property stood limited to the use of W. G. for life, with remainder to his first and other sons successively in tail male, with remainder to J. S. in tail male, with remainders over.

Held, also, by Sargant J., that, assuming W.'s life estate was a legal estate and the devise in remainder to his descendants was capable of giving W. an estate in tail male, the rule in *Shelley's Case* did not apply so as to execute the estate in W., but that the limitations to his descendants were limitations to his sons and grandsons by way of purchase, and so as to execute in them successive estates for life and in tail male, and that the same ruling applied in the case of the devisees to J. W. and his descendants (*In re Keane's Estate* [1903] 1 I. R. 215 disapproved, and *In re Simcoe* [1913] 1 Ch. 552 distinguished). *In re Hobbs*. *HOBBS v. HOBBS* C. A. [1917] 1 Ch. 569; 86 L. J. (Ch.) 409; 116 L. T. 270; [1917] W. N. 111

Estate by Implication.

Settlement—Trust for life, remainder for "every son and his issue male in succession, so that," &c.—Introductory words explained by subsequent limitations—Estate by implication.

Testator devised real estate on trust for C. I. E. for life, and after his decease in trust for every son of C. I. E. and his issue male in succession, so that every elder son and his issue male might be preferred to every younger son and his issue male, and so that every such son might take an estate for life, with remainder to his first and every subsequent son successively according to seniority in tail male, and in default of issue of C. I. E. on similar trusts for F. E. for life and every son of F. E. and his issue male, with remainder over. Testator died in 1869. C. I. E. died in 1900, without having had issue. F. E. entered into possession as tenant for life. Plt. was F. E.'s eldest son, born after testator's death:—

Held, that, the initial words of the devise being merely introductory to the effective limitations which followed, the plt., if he had been born in the testator's lifetime, would have been tenant for life only, but, having been born subsequently, was tenant in tail male by implication.

In re Simcoe [1913] 1 Ch. 552 distinguished.

In re Lord Lawrence [1915] 1 Ch. 129 and dictum of Lord Cozens-Hardy M.R. in *In re Hobbs* [1917] 1 Ch. 597 applied. *In re ELTON*. *ELTON v. ELTON* Younger J. [1917] 2 Ch. 413; 117 L. T. 533; [1917] W. N. 301

Income.

Gift of, derived from estates—Disposition of residue of "my income, estates," &c.—Corpus given by gift of income—Contrary intention.

A testatrix gave to her husband "one half of the income derived from my share in estates

WILL (Devise)—continued.

in Ireland," and made a disposition of "the residue of my income, estates," &c., in favour of her daughter:—

Held, that there was nothing in the will to indicate an intention to cut down the devise to the husband of the absolute interest in the corpus contained in the gift of the income of the estates. *BAKER v. BLOUNT* - [1917] 1 I. R. 316

Name and Arms Clause.**Use of surname.**

Held, that in order to comply with the clause the specified surname must be added after that of the devisee, and prefixing it to that of the devisee would not be a compliance. *In re LLANGATTOCK*. *SHELLEY v. HARDING*

Neville J. 33 T. L. R. 250

Rule in Shelley's Case.

See above, *Equitable Limitations*, col. 469.

Election.

See *ELECTION*, col. 154.

Illegitimate Child.

— Gift to.

See below, *Legacy*, col. 473.

Legacy.**Contingent.**

Leasehold—Destination of profits till vesting. Contingent bequest of leasehold, neither vested in trustees nor preceded by a vested limited interest, with gift over:—

Held, not to carry intermediate rents and profits, which fell into residue.

Semble, a contingent legacy is segregated, so as to carry interim income, by being subject to a prior vested limited interest.

The rule that a contingent legacy by a parent to a child carries interest during suspense of vesting does not apply where the parent is the mother unless she is actually standing in loco parentis to the legatee. *In re EYRE*. *JOHNSON v. WILLIAMS* - Younger J. [1917] 1 Ch. 351; 86 L. J. (Ch.) 257; 116 L. T. 469; [1917]

W. N. 66; 61 S. J. 336

Forfeiture.

If legatee a Roman Catholic—Infant legatee.

A testatrix bequeathed 5000*l.* upon trusts to invest and to accumulate the income until her nephew M. should attain the age of twenty-four years, and after he should have attained that age to pay the income of the 5000*l.* and of the accumulations to him during his life, "provided he shall not be a Roman Catholic at my death or being a Roman Catholic at my death shall cease to be a Roman Catholic before the expiration of twelve calendar months after my death until he shall after my death become a Roman Catholic," with a gift over on the happening of any of the aforesaid events or of his death, whichever should first happen. At the death of the testatrix M. was about eleven years of age and had been baptized in the Roman Catholic faith, and was being brought up in that faith by his father, who was a Roman Catholic:—

WILL (Legacy)—continued.

Held, that the infant was not a Roman Catholic at the death of the testatrix within the meaning of the will, that the testatrix meant him to have an opportunity of making his choice in the matter, and that opportunity he would have after attaining his age of twenty-one years and before the legacy became payable. *In re MAY. EGGAR v. MAY* - - Neville J. [1917] 2 Ch. 126; 86 L. J. (Ch.) 698; 117 L. T. 401; [1917] W. N. 205; 33 T. L. R. 419; 61 S. J. 577

Illegitimate Child, Gift to.

Gift to future illegitimate children—Gift to child en ventre sa mère at testator's death—Inquiry as to paternity.

A gift by will to future illegitimate children defined by reference to their paternity will fail for uncertainty, because the law forbids an inquiry as to the paternity of illegitimate children. *In re HOMER. COWLISHAW v. RENDELL* - - Eve J. 86 L. J. (Ch.) 324; 115 L. T. 703

Interest.

— Discretion of trustees—Refusal to raise legacy.

See below TRUST, col. 476.

From what date payable—Trust—Income for maintenance of wife and children.

A testator directed that the income of a trust legacy should so long as his wife remained his widow be paid to her until his children respectively attained the age of twenty-one years, or, being daughters or a daughter, married under that age, to be wholly applied by his wife for the maintenance of herself and the maintenance and education of his children, with a gift of three fifths of the corpus of the legacy to his children at twenty-one or marriage, and of the remaining two fifths of the corpus for his wife during widowhood, with reversion to his children:—

Held, that the legacy carried interest from the death of the testator.

In re Crane [1908] 1 Ch. 379 distinguished.

The proposition in Jarman on Wills, 6th ed., vol. ii., p. 1114, that "where a testator bequeaths a legacy to an adult, subject to the obligation of maintaining the testator's children, or children towards whom he stands in loco parentis, it does not carry interest until after a year from the testator's death," is too broadly stated. *In re RAMSAY. THORPE v. RAMSAY* Neville J. [1917] 2 Ch. 64; 86 L. J. (Ch.) 514; 117 L. T. 117

Legacies charged on real estate—Sale deferred—Rate of interest on unpaid legacies.

In this case the testator, who died in Nov., 1914, bequeathed a number of pecuniary legacies of considerable amount, and directed payment thereof out of the proceeds of sale of his real and residuary personal estate, which he devised and bequeathed to the plts., his executors and trustees, upon trust for sale and conversion. The testator directed the residue to be applied for charitable purposes.

The plts. had exhausted the personal estate in payment of the testator's funeral and testa-

WILL (Legacy)—continued.

mentary expenses and debts and part of the legacies, but were advised not to put the real estate up for sale at the present time, and consequently the payment of the remainder of the legacies was deferred. Interest at the rate of 4½ per cent. had been paid on the unpaid portions since Nov., 1915. The plts. now asked (inter alia) what rate of interest should be allowed upon the pecuniary legacies.

Peterson J. said that the unpaid portions of the legacies should thenceforth carry interest at the rate of 5½ per cent. from the date of the order. *In re BURLEY. TATHAM v. WELCH*

Peterson J. [1917] W. N. 115

Lapse.

See above, Codicil, col. 463.

Proviso following words of Wills Act, 1837 (1 Vict. c. 26), s. 33—Explanatory addition—Next of kin.

A testatrix by her will bequeathed certain parts of her property to her five children in equal shares, and bequeathed the residue of her property to four of such children in equal shares, and declared that, in case any child should die in her lifetime leaving issue surviving her, the bequests to the children should take effect in the same manner as if the child so dying had survived and died immediately after the testatrix, and so that the share or shares of the testatrix's estate bequeathed to him or her, or which he or she would have taken if surviving the testatrix, should devolve to his or her next of kin or legatees as part of his or her estate accordingly. Two of the children who were residuary legatees pre-deceased the testatrix. One died a bachelor and intestate. The other died intestate, leaving a husband and four children, who survived the testatrix:—

Held, that the shares of the daughter who predeceased the testatrix did not devolve upon her children as her next of kin, but upon her husband, and that the same devolved upon him under the express provisions of the will, and not under s. 33 of the Wills Act, 1837. *In re MORRIS. CORFIELD v. WALLER* - - Eve J. 86 L. J. (Ch.) 456; 115 L. T. 915

Validity.

— Anti-Christian company.

See COMPANY, col. 92.

Name and Arms Clause.

See above, Devise, col. 472.

Portions for Daughters.

Gift over on death unmarried—Accrued shares.

A testator by his will charged his estates with the sum of 27,000*l.*, and bequeathed the same to trustees upon trust to pay to each of his nine daughters the sum of 3000*l.*, not to be raised or become payable till her marriage, when same was to be paid and advanced as her fortune, but in lieu thereof each of his daughters was to receive an annuity of 100*l.* until marriage; if any daughter died unmarried before her portion became payable, she was to have power to dispose by will of 1000*l.* of it amongst her sisters,

WILL (Portions for Daughters)—continued.

the residue of the portion or portions of any daughter dying unmarried to go to, and to be applied towards, increasing the portions or shares of the surviving daughters, provided that the portion or share of any daughter was in no event to exceed the sum of 5000*l*.

The testator's nine daughters survived him. Three married, and received their portions. The testator's daughter E. died unmarried, having appointed the sum of 1000*l*., part of the 3000*l*., amongst such of her sisters as should survive her and not have been married, in equal shares. She left surviving six sisters, one married and five unmarried. On her death each of the fortunes of her surviving sisters became increased by the sum of 333*l*. 6*s*. 8*d*., being one-sixth of 2000*l*., the residue of her fortune, and her married sister became entitled to and was paid a like sum of 333*l*. 6*s*. 8*d*.

Subsequently the testator's daughter F. died unmarried, having appointed the sum of 1000*l*., part of her 3000*l*., to her surviving sisters in like manner. On the death of F. the fortunes of each of her four unmarried sisters, which had been increased by 333*l*. 6*s*. 8*d*., became further increased by a sum of 400*l*., being one-fifth of 2000*l*. the residue of her fortune, and her married sister became entitled to be paid a like sum of 400*l*. :—

Held, on the true construction of the testator's will, that the additional portions should go in the same manner as the original portions, and that the shares accrued as well as original were only raisable in the event of marriage. **HAYES v. HAYES - - O'Connor M.R. (Tr.) [1917] 1 I. R. 194**

Power of Appointment.

— General bequest of property upon trusts for objects of power.

See POWER OF APPOINTMENT, col. 307.

Probate.

See PROBATE, col. 334.

Soldier's Will.

— Marriage—Revocation.

See PROBATE, col. 335.

Substitutional Gift.

Construction—Words of futurity—Gift to children of testator—Grandchildren—Child dead at date of will leaving children.

Testator, who died in 1874, by his will, made six days previously to his death, gave 500*l*. to each of the children of his deceased daughter, E., and disposed of his residue "Unto and equally amongst all my children, who being a son or sons have attained or shall hereafter attain the age of twenty-one years or being a daughter or daughters have attained or shall hereafter attain the age of twenty-one years or shall marry in equal shares: Provided always that if any child of me shall die in my lifetime leaving a child or children who shall survive me and being a son or sons shall attain the age of twenty-one years or being a daughter or daughters shall attain that age or marry then and in every such case the last mentioned child

WILL (Substitutional Gift)—continued.

or children shall take (and if more than one, equally between them) the share which his, her or their parent would have taken of and in the residuary trust funds if such parent had survived me and attained the age of twenty-one years."

The testator had eight children by his first marriage, all of whom had attained twenty-one at the date of the will, and six children by his second marriage, none of whom had then attained twenty-one or married. E., a daughter by the first marriage, was to the knowledge of the testator dead at the date of the will leaving six children, all of whom were then living but none of whom had then attained twenty-one or married :—

Held, that the words in the proviso "shall die in my lifetime" were to be construed in their natural future sense, and that the children of E. were not entitled to any share in the residue.

Goring v. Mahlstedt [1907] A. C. 225 followed and applied.

In re Williams [1914] 1 Ch. 219; [1914] 2 Ch. 61 distinguished. *In re Brown. LEEDS v. SPENCER - - Younger J. [1917] 2 Ch. 232; 86 L. J. (Ch.) 561; 117 L. T. 268; [1917] W. N. 183; 61 S. J. 546*

Trust.

Legacy out of residue given on trust for sale—Powers to postpone and appropriate—Interest at 3½ per cent. in meantime given on legacy—Bona fide refusal of trustee to raise legacy or appropriate—Refusal proper exercise of discretion—Duty to have regard to interests of estate generally.

Testatrix by her will devised and bequeathed her residuary real and personal property to her trustees upon trust to sell and convert and out of the money to arise from such sale and conversion to raise the clear sum of 230,000*l*. and to invest the same in manner thereby authorized. And she declared that "all or any part" of the said sum of 230,000*l*. which should not for the time being have been raised or appropriated should bear interest from her death at the rate of 3½ per cent. per annum and such interest should be deemed "part of the income of the investments representing" the 230,000*l*. And she declared that the trustees should stand possessed of the 230,000*l*. and the investments for the time being representing the same, thereafter designated "the trust fund," upon trust to pay "as from the day of my death" the income of the trust fund to R. B. C. during his life, and after his death to hold the same on the trusts therein mentioned. Subject and without prejudice to the raising of the 230,000*l*. the testatrix directed that her trustees should hold the residue upon certain trusts therein mentioned. She empowered her trustees at any time or times in their "uncontrolled discretion" to appropriate unconverted investments in or towards satisfaction of the trust fund, or any legacy or share in the premises, and "at their discretion" to postpone the sale or conversion "of any part or parts" of the residue, and directed that the income of the

WILL (Trust)—continued.

unsold residue should "from the period of my death" go as the income of the proceeds of sale would go "if such sale or conversion into money were then actually made." The trustees refused to raise, or appropriate to, the legacy or any part thereof on the ground (as the C. A. held in fact) that in the interests of all parties concerned in the management of the estate the present time was most inopportune for realization. They, however, stated that it was possible that they might in the exercise of their discretion appropriate some of the investments which had a fixed value towards such satisfaction. The bona fides of the trustees was not questioned:—

Held, that the trustees were entitled to postpone and delay the conversion of the residuary estate beyond one year from the death, and that in postponing or delaying the sale and conversion of the residuary estate the trustees had not improperly exercised the discretion vested in them.

Held, also, on construction, that R. B. C., as the tenant for life of the 230,000*l.* trust fund, was only entitled to receive out of the residuary estate interest at 3*½* per cent. per annum as from the death of the testatrix on the said sum, or on such part thereof as from time to time should remain unpaid or unappropriated, and was not entitled to receive out of the residuary estate any further sum in respect of income which, had the trust fund been raised and invested or appropriated, he would have received.

Decision of Younger J. [1917] 1 Ch. 377 on these two points reversed and cross-appeal by the tenant for life that the Court should exercise the discretion vested in the trustees dismissed.

In re CHARTERIS. CHARTERIS v. BIDDULPH
C. A. [1917] 2 Ch. 379; 86 L. J. (Ch.) 658;
117 L. T. 391; [1917] W. N. 221;
61 S. J. 591

Settled fund—Remainder after life interest at the disposal of trustees of the will—General gift of residue—Trustees' right to take beneficially—Subsequent trustee by representation—Intention.

Where a testator gives the ultimate remainder of a fund, after the termination of a life interest, to be disposed of at the discretion of the trustees of his will, and makes a general gift of all his residue, a trustee by representation of the last surviving trustee named in the will is not entitled to take the fund beneficially, and it will pass under the general gift of residue.

In re Howell, *In re* Buckingham, *Liggins v. Buckingham* [1915] 1 Ch. 241 distinguished.

In re Booth. HATTERSLEY v. COWGILL
Astbury J. 86 L. J. (Ch.) 270; 116 L. T. 465

Vesting.

Gift during widowhood—Gift over to children at her death—Vesting on re-marriage.

In re WARNER. WATTS v. SILVEY

Sargant J. [1917] W. N. 374;
84 T. L. R. 130; 62 S. J. 159

Gift of income of fund to widow till re-marriage—Gift over on her death—Period of distribution—Then living."

A testator directed his executors to pay to

WILL (Vesting)—continued.

his wife the income of a fund of 1000*l.* until her re-marriage (which event happened), and then to pay her 300*l.* out of the fund. He directed that on the widow's death the 700*l.* residue should be divided among the eldest sons of his brother and sisters "then living and mentioned in this will."

W. was the first-born son of a sister of the testator. He died before the re-marriage of the widow. The mother of W. was mentioned by name in the will, and survived the widow:—

Held, that W. took a vested interest in the sum of 700*l.* liable to be divested if his mother had pre-deceased the widow, and, as this event had not happened, that he became entitled to a share of the fund of 700*l.* *In re* CROTHERS' TRUSTS (No. 2) - - - Barton J. (Ir.) [1917] 1 I. R. 356

Gift over of income—Children and issue—Whether gift to issue contingent or vested.

J. L. by a codicil to her will directed her trustees that if after implementing certain purposes there should remain in their hands any surplus interest of her estate, they should yearly at Whitsunday divide whatever available surplus there might be in their hands at that term "equally among all my then surviving children" (including her three daughters named in her codicil if alive) "and the lawful issue per stirpes of any of my children who may pre-decease leaving such issue, the issue of a pre-deceasing child taking only the sum to which their parent would have been entitled had he or she survived," as provided in the testatrix's will.

It had been on a former occasion held that the word "issue" meant issue in general, and that a gift in the will of the testatrix to the issue of capital in remainder was in terms a contingent gift:—

Held, distinguishing on this point *In re Embury*, *Page v. Bowyer*, 109 L. T. 511, that in the gift to them of the surplus income the contingency which was attached to the children not being in terms attached to the issue the contingency of surviving Whitsunday did not extend to the issue. *In re* LANGLANDS. LANGLANDS v. LANGLANDS - - - Eve J. 117 L. T. 11

Gift to husband of unmarried daughter.

A devise or bequest "to the husband of A.," if there be no such person, either at the date of the will, or at the death of the testator, applies to the person who shall first answer the description of husband at any subsequent period.

A testator bequeathed securities to trustees upon trust to pay the income to his granddaughter for her sole and separate use, free from the debts, control, or engagements of any husband she might marry; and from and after her death upon trust to pay the annual income to her husband surviving her for his life; and as to the capital thereof upon trust, after the death of the survivor, for her children or remoter issue; and in default of such issue becoming entitled, then upon trust as to 10,000*l.* for such person or persons as she should by will or deed appoint, and, subject thereto, upon trust to pay the unappointed portion of the 10,000*l.* and

WILL (Vesting)—*continued.*

the residue to the children of the testator's nephews. The testator's granddaughter, subsequent to testator's death, married a husband, who predeceased her. There was no issue of the marriage. Having appointed the 10,000*l.* to herself absolutely, and having attained the age of fifty-nine years, she applied that the 10,000*l.* should be raised and paid to her:—

Held, that she was entitled to the order sought. *BLOUNT v. CROZIER* - Barton J. (Ir.) [1917] 1 I. R. 461

WILL—Soldier's.

See PROBATE, col. 335.

WINDING-UP BUSINESS—Enemy firm.

See EMERGENCY LEGISLATION, col. 155.

WINDING UP—Company.

See COMPANY—WINDING UP, col. 98, and WORKMEN'S COMPENSATION, col. 516.

WITHDRAWAL FEE—Public trustee—Costs of distribution—Incidence

See REVENUE, col. 353.

WITHDRAWAL OF INTERVENTION—Trustee—Bankruptcy.

See BANKRUPTCY, col. 64.

"WITHOUT PREJUDICE."

See LANDLORD AND TENANT, col. 247.

WITNESS—Bankruptcy—Examination.

See BANKRUPTCY, col. 64.

—Criminal law.

See CRIMINAL LAW, col. 129.

—Lost will.

See PROBATE, col. 334.

WOOL—Enemy country, to be combed in—Prize Court.

See PRIZE COURT, col. 321.

WORDS—"Actually present" (vessels). *In re FALKLAND ISLANDS BATTLE. Ex parte H.M.S. CANOPUS* - [1917] P. 47— "Advances appearing in books of account." *In re DEPREEZ. HENRIQUES v. DEPREEZ* [1917] 1 Ch. 24— "Agreed to buy." *MARTEN v. WHALE* C. A. [1917] 2 K. B. 480— "All my monies." *In re GLIDDON* [1917] 1 Ch. 174— "Amount of debt and costs." *CARRINGTON v. DEANE* - Div. Ct. [1917] 1 K. B. 717— "Any credible witness." *REX v. NOAKES (JOHN)* - C. C. A. [1917] 1 K. B. 581— "Any other moneys." *In re WOOLLEY* [1917] W. N. 279— "Apparent possession." *SALES AGENCY, LD. v. ELITE THEATRES* - C. A. [1917] 2 K. B. 164— "Appointed date." *STONE v. WOOD* Div. Ct. [1917] 2 K. B. 885— "Armed ship." *H.M. SUBMARINE VESSEL E 14* - [1917] P. 85**WORDS**—*continued*— "Assets of the business." *In re TH. GOLDSCHMIDT, LD.* - [1917] 2 Ch. 134— "Assignment for benefit of creditors." *In re HALSTEAD* - C. A. [1917] 1 K. B. 695— "Average prices governing payment of rent." *INLAND REV. COMRS. v. LONSDALE'S (EARL OF) SETTLED ESTATES TRUSTEES* - [1917] 2 K. B. 760— "Baltic round." *SCOTTISH NAVIGATION CO. v. W. A. SOUTER & CO. ADMIRAL SHIPPING CO. v. WEIDNER, HOPKINS & CO.* - C. A. [1917] 1 K. B. 222— "Bare trustee." *In re BLANDY JENKINS' ESTATE. BLANDY JENKINS v. WALKER* [1917] 1 Ch. 46— "Being allowed all necessary materials" for repair. *WESTACOTT v. HAHN* Div. Ct. [1917] 1 K. B. 605— "Benevolent." *ATT.-GEN. FOR NEW ZEALAND v. BROWN* - J. C. [1917] A. C. 593— "Building lease." *HILLYARD v. McDONALD* C. A. [1917] 2 K. B. 248— "Calling back" (accounts). *REX v. M'LOUGHLIN* - C. A. (Ir.) [1917] 1 I. R. 174— "Cannot be found." *RHYMNEY IRON CO. v. GELLIGAER D. C.* - Div. Ct. [1917] 1 K. B. 589— "Cases pending." *MORAPISO BATHOVEN v. REX* - J. C. [1917] A. C. 207— "Cause arising as a sea risk." *BRITISH AND FOREIGN STEAMSHIP CO. v. REX* [1917] 2 K. B. 769— "Charged" (to income tax). *REX v. SOUTHAMPTON INCOME TAX COMRS. Ex parte SINGER* C. A. [1917] 1 K. B. 259— "Chassis of motor cars, lorries and waggons." *FALKNER v. WHITTON* J. C. [1917] A. C. 106— "Claiming from or under." *In re GRIFFITHS. GRIFFITHS v. RIGGS* - [1917] W. N. 51— "Commodities." *THE FREDERIK VIII.* [1917] P. 43— "Competent witness for the defence." *REX v. WHEELER* - C. C. A. [1917] 1 K. B. 283— "Conclusive proof of cargo shipped." *HOGARTH SHIPPING CO. v. BLYTH, GREENE, JOURDAIN & CO.* - C. A. [1917] 2 K. B. 534— "Condition." *GRAHAM v. HART* C. A. [1917] 1 K. B. 201— "Consequences of warlike operations." *BRITISH AND FOREIGN STEAMSHIP CO. v. REX* - [1917] 2 K. B. 769— "Contingency beyond control of seller or buyer." *TENNANTS (LANCASHIRE), LD. v. WILSON (C. S.) & CO.* H. L. (E.) [1917] A. C. 495— "Conveyance or transfer on sale." *COMMISSIONERS OF STAMPS v. QUEENSLAND MEAT EXPORT CO. J. C.* [1917] A. C. 624

WORDS—continued.

- "Criminal case." *TORONTO RY. CO. v. REX*
J. C. [1917] A. C. 630
- "Criminal cause or matter." *REX v.*
GARRETT. Ex parte SHARP - C. A.
[1917] 2 K. B. 99
- "Dead-weight capacity." *W. MILLAR & CO.*
v. S.S. FREDEN (OWNERS)
[1917] 2 K. B. 657
- "Deemed to have been duly enlisted for
the period of the war." *REX v. COM-*
MANDING OFFICER, 30TH BATTALION
MIDDLESEX REGIMENT. Ex parte
FREYBERGER - C. A. [1917] 2 K. B. 129
- "Deemed to have been served and received."
REX v. WESTMINSTER UNIONS ASSESS-
MENT COMMITTEE. Ex parte WOOD-
WARD & SONS - - - Div. Ct.
[1917] 1 K. B. 832
- "Dependants." *HUGHES v. QUINN*
C. A. (Ir.) [1917] 2 I. R. 442
- "Descendants of — or their descendants
living at my death." *In re HICKEY.*
BEDDOES v. HODGSON [1917] 1 Ch. 601
- "Developed" (land). *FERGUSON v. INLAND*
REV. COMMRS. - - - C. A. [1917]
1 K. B. 193
- "Die leaving issue her surviving." *In re*
WALKER. DUNKERLY v. HEWERDINE
[1917] 1 Ch. 38
- "Directly, independently and exclusively of
all other causes." *FIDELITY AND*
CASUALTY CO. OF NEW YORK v.
MITCHELL - J. C. [1917] A. C. 592
- "Director of public companies." *In re*
CHURCH PRESS, LD. - 116 L. T. 247
- "Due notice." *PLUMMER v. PLUMMER*
C. A. [1917] P. 163
- "Employment by same employer." *GREEN-*
WOOD v. JOSEPH NALL & CO.
H. L. (E.) [1917] A. C. 1
- "Equitable interest." *COMMISSIONERS OF*
STAMPS v. QUEENSLAND MEAT EXPORT
CO. - - - J. C. [1917] A. C. 624
- "Et cetera." *In re WALMSLEY AND SHAW'S*
CONTRACT - - - [1917] 1 Ch. 93
- "Every son and his issue male in succession,
so that," &c. (Remainder for). *In re*
ELTON. ELTON v. ELTON
[1917] 2 Ch. 413
- "Excessive interest." *In re A DEBTOR.*
Ex parte THE PETITIONING CREDITOR
C. A. [1917] 2 K. B. 60
- "Expenses properly incurred." *In re GEEN.*
Ex parte PARKER - [1917] 1 K. B. 183
- "Fictitious or non-existing person." *TOWN*
AND COUNTY ADVANCE CO. v. PRO-
VINCIAL BANK OF IRELAND - Div. Ct.
(Ir.) [1917] 2 I. R. 421
- "Fine, premium, or other like sum in addi-
tion to rent." *SHARP BROTHERS &*
KNIGHT v. CHANT - C. A. [1917]
1 K. B. 771

WORDS—continued.

- "For and on behalf of." *H. O. BRANDT &*
CO. v. H. N. MORRIS & CO. - - -
C. A. [1917] 2 K. B. 784
- "For the time being." *RIDOUT v. COPE*
Div. Ct. [1917] 2 K. B. 706
- *STONE v. WOOD* - - - Div. Ct.
[1917] 2 K. B. 885
- "Free of all death duties." *In re KENNEDY.*
CORBOLD v. KENNEDY
C. A. [1917] 1 Ch. 9
- "Free of all duties." *In re SAILLARD.*
PRATT v. GAMBLE - - - C. A.
[1917] 2 Ch. 401
- "Free of duty." *In re D'O'VLY. VERTUE*
v. D'O'VLY - - - [1917] 1 Ch. 556
- *In re EVE* - - - [1917] 1 Ch. 562
- "Freight and all other conditions and excep-
tions as per charterparty." *HOGARTH*
SHIPPING CO. v. BLYTH, GREENE,
JOURDAIN & CO. - - - C. A.
[1917] 2 K. B. 534
- "From" (tenancy granted). *MEGGESON v.*
GROVES - - - [1917] 1 Ch. 158
- "Goods." *THE FREDERIK VIII.*
[1917] P. 43
- "Harsh and unconscionable transaction."
In re A DEBTOR. Ex parte THE
PETITIONING CREDITOR - C. A.
[1917] 2 K. B. 60
- "Heirs." *In re CUSIN* - [1917] 1 I. R. 63
- "Holder" (of licence). *JONES v. HATHER-*
TON - Div. Ct. [1917] 2 K. B. 412
- "Houses." *B. AERODROME, LD. v. DELL*
Div. Ct. [1917] 2 K. B. 380
- "In an efficient state to resume service."
THOMAS SMAILES & SON v. EVANS &
REID, LD. - [1917] 2 K. B. 54
- "In course of delivery" (sample taken). *COX*
v. EVANS - Div. Ct. [1917] 1 K. B. 275
- "In full discharge." *In re MOORE'S RENTS*
[1917] 1 I. R. 244
- "Keep her course and speed." *THE ECHO*
[1917] P. 132
- "Lawfully sworn as a witness." *REX v.*
WHEELER - C. C. A. [1917] 1 K. B. 283
- "Left behind." *COLBOURNE v. LAWRENCE*
Div. Ct. [1917] 2 K. B. 857
- "Loss attributable to unseaworthiness."
THOMAS v. TYNE AND WEAR STEAM-
SHIP FREIGHT INSURANCE ASSOCIATION
[1917] 1 K. B. 938
- "Loss of damage or misfortune to" goods.
MOORE v. EVANS
C. A. [1917] 1 K. B. 458
- "Loss or damage by fire." *ENLAYDE, LD. v.*
ROBERTS - - - [1917] 1 Ch. 109
- "Merchant." *In re CHURCH PRESS, LD.*
116 L. T. 247
- "Military or usurped power" (damage
resulting from). *ROGERS v. WHIT-*
TAKER - - - [1917] 1 K. B. 942

WORDS—continued.

- "Minor." *REX v. SANDERS*
Div. Ct. [1917] 2 K. B. 390
- "Mineral." *ATT.-GEN. v. SALT UNION, LD.*
[1917] 2 K. B. 488
- "Misstatement or error in the description of the premises." *LEE v. RAYSON*
[1917] 1 Ch. 613
- "Moneys (any other)." *In re WOOLLEY*
[1917] W. N. 279
- "Monies (all my)." *In re GLIDDON. SMITH v. GLIDDON* - - [1917] 1 Ch. 174
- "Monies which shall arise from sale." *In re LIVINGSTONE* - - [1917] W. N. 90
- "More or less about" (specified quantity). *In re HARRISON AND MICKS, LAMBERT & Co.* - Div. Ct. [1917] 1 K. B. 755
- "Mortgagee in possession." *In re PROVIDENT ASSOCIATION, LD. AND GOLLOGLY'S CONTRACT* - [1910] 1 I. R. 240
- "Motor cars, lorries and waggons." *FALKNER v. WHITTON*
J. C. [1917] A. C. 106
- "My real estate consisting of my interest in the lands of D." *DAVY v. REDINGTON*
C. A. (Ir.) [1917] 1 I. R. 250
- "My shares." *In re HOLMES. VILLIERS v. HOLMES* - - [1917] 1 I. R. 165
- "Navire de commerce." *THE GERMANIA*
J. C. [1917] A. C. 375
- "Net profits." *THOMAS v. HAMLYN & Co.*
[1917] 1 K. B. 527
- "Non-delivery of any consignment." *GREAT WESTERN RY. Co. v. WILLS*
H. L. (E.) [1917] A. C. 148
- "Not accountable for errors in description." *T. & J. HARRISON v. KNOWLES & FOSTER* - - [1917] 2 K. B. 606
- "Ordinarily resident in Great Britain." *REX v. THE COMMANDING OFFICER OF MORN HILL CAMP, WINCHESTER. Ex parte FERGUSON*
Div. Ct. [1917] 1 K. B. 176
- "Original literary work." *D. P. ANDERSON & Co. v. THE LIEBER CODE Co.*
[1917] 2 K. B. 469
- "Owner of prior estate." *In re BLANDY JENKINS' ESTATE. BLANDY JENKINS v. WALKER* - - [1917] 1 Ch. 46
- "Party chargeable." *In re H. P. DAVIES & SON* - - [1917] 1 Ch. 216
- "Person." *MOUSELL BROTHERS, LD. v. LONDON AND NORTH-WESTERN RY. Co.* - - [1917] 2 K. B. 836
- "Preventing or hindering delivery." *TENANTS (LANCASHIRE), LD. v. WILSON (C. S.) & Co.* - H. L. (E.) [1917] A. C. 495
- "Profits available for distribution as dividend." *COLLINS v. SEDGWICK*
[1917] 1 Ch. 179

WORDS—continued.

- "Railway lands." *CORNWALL MUNICIPAL CORPORATION v. OTTAWA AND NEW YORK RY. Co.* - J. C. [1917] A. C. 399
- "Regular ministers of any religious denomination." *SIMMONDS v. ELLIOTT*
Div. Ct. [1917] 2 K. B. 894
- *STONE v. WOOD* - - Div. Ct. [1917] 2 K. B. 885
- "Remainder" of cargo. *In re HARRISON AND MICKS, LAMBERT & Co.*
Div. Ct. [1917] 1 K. B. 755
- "Rent." *ASPLEN v. PULLIN*
Div. Ct. [1917] 1 K. B. 187
- *PARSONS v. HAMBRIDGE*
C. A. 33 T. L. R. 346
- "Sale in lieu of foreclosure." *HOSACK v. ROBINS* - - C. A. [1917] 1 Ch. 332
- "Sale of an equitable interest." *COMMISSIONERS OF STAMPS v. QUEENSLAND MEAT EXPORT Co.* - - J. C. [1917] A. C. 624
- "Secretary or clerk." *REX v. M'LOUGHLIN*
C. A. (Ir.) [1917] 2 I. R. 200
- "Settlement." *In re MONCKTON'S SETTLEMENT. MONCKTON v. CALDER*
[1917] 1 Ch. 224
- "Shall die in my lifetime." *In re BROWN. LEEDS v. SPENCER* - [1917] 2 Ch. 232
- "Shop." *WALLACE v. DIXON*
Div. Ct. (Ir.) [1917] 2 I. R. 236
- "Statutory defence." *BRIGHT v. ROGERS*
Div. Ct. [1917] 1 K. B. 917
- "Tenant for life." *In re MONCKTON'S SETTLEMENT* - [1917] 1 Ch. 224
- "Theft or dishonesty committed by servant." *HURST v. EVANS*
[1917] 1 K. B. 352
- "Then living." *In re CROTHERS' TRUSTS*
[1917] 1 I. R. 356
- "Time or times when they ought to be delivered." *C. SHARPE & Co. v. NOSAWA & Co.* - [1917] 2 K. B. 814
- "To go and be held." *In re BERESFORD-HOPE. ALDENHAM v. BERESFORD-HOPE* - - [1917] 1 Ch. 287
- "Town." *REX v. LOCAL GOVERNMENT BOARD (Ir.)* - C. A. [1917] 2 I. R. 454
- "Traffic" (dock). *BRISTOL CORPORATION v. GREAT WESTERN RY. Co.*
C. A. 15 L. G. R. 17
- "Travelling expenses." *WARD v. NIELD*
[1917] 2 K. B. 832
- "Undeveloped land." *FERGUSON v. INLAND REV. COMMS. C. A.* [1917] 1 K. B. 193
- "Upon such trusts as will best correspond with the uses, trusts, and powers" (of settled realty). *In re BERESFORD-HOPE* - - [1917] 1 Ch. 287

WORDS—continued.

- “Used bona fide for any business” (land).
FERGUSON v. INLAND REV. COMMS.
C. A. [1917] 1 K. B. 193
- “View, cognizance, or management” (of Commissioners of Sewers). NESBITT v. MABLETHORPE U. D. C.
[1917] 2 K. B. 563
- “Wages.” SHELFOED v. MOSEY
Div. Ct. [1917] 1 K. B. 154
- “Warranted free from all consequences of hostilities.” LEYLAND SHIPPING CO. v. NORWICH UNION FIRE INSURANCE SOCIETY - - [1917] 1 K. B. 873
- “Weekly payment.” CARLTON MAIN COLLIERY CO. v. CLAWLEY
C. A. [1917] 2 K. B. 691
TARR v. CORY BROTHERS & CO.
C. A. [1917] 2 K. B. 774
- “Weight, measure, quality, contents and value unknown.” HOGARTH SHIPPING CO. v. BLYTH, GREENE, JOURDAIN & CO. - - C. A. [1917] 2 K. B. 534
- “Weight, measurement, contents and value unknown.” NEW CHINESE ANTIMONY CO. v. OCEAN STEAMSHIP CO.
C. A. [1917] 2 K. B. 664
- “Whole debt.” *In re* PAWSON
[1917] 2 K. B. 527
- “Without prejudice.” BURCH v. FARROWS BANK, LD. - - [1917] 1 Ch. 606

WORDS OF FUTURITY— Will — Gift to children of testator.
See WILL, col. 475.

WORDS OF LIMITATION — Real estate — Equitable estates in fee simple.
See SETTLEMENT, col. 388.

WORKMEN'S COMPENSATION.

Accident arising out of and in the course of Employment—

Risk Incidental to Employment, col. 486.

Risk not Incidental to Employment, col. 490.

Accident—Claim—Notice, col. 494.

Accident—Evidence, col. 496.

Agreement. See below, Compensation, Appeal, col. 500.

Arbitration—

Award, col. 501.

Dispute, col. 501.

Claim. See above, Accident—Claim.

Compensation—

Agreement, col. 502.

Assessment, col. 504.

Redemption, col. 508.

Review, col. 509.

Contracting-out Scheme, col. 511.

WORKMEN'S COMPENSATION—continued.

Costs, col. 512.

Declaration of Liability. See above, Compensation.

Dependants, col. 512.

Employment, col. 514.

Evidence. See above, Accident—Evidence.

Indemnity, col. 514.

Industrial Disease, col. 514

Medical Assessor, col. 515.

Medical Referee, col. 516.

New Trial. See above, Compensation.

Notice of Claim. See above, Accident—Claim—Notice.

Recorded Agreement. See above, Compensation.

Remedies, col. 516.

Suspensory Award. See above, Arbitration.

Workman, col. 517.

Accident arising out of and in the Course of Employment.

Risk Incidental to Employment.

Employer's premises—Fall of adjacent wall—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.

A woman employed by a fish-curer, while working in a shed belonging to her employer, was injured by the fall of a wall which was being built on the property of an adjoining proprietor, with the result that the roof of the shed collapsed and the woman was buried under the wreckage:—

Held, that the accident arose out of her employment within the meaning of the Workmen's Compensation Act, 1906.

Dictum of Cozens-Hardy M.R. in *Craske v. Wigan* [1909] 2 K. B. 635, 638, discussed.

Guthrie v. Kinghorn, 1913 S. C. 1155 doubted.

Interlocutor of the Second Division of the Ct. of Sess. in Scotland, 1916 S. C. 85, reversed.

THOM (MARGARET) OR SIMPSON v. SINCLAIR

H. L. (Sc.) [1917] A. C. 127; 86 L. J. (P. C.)

102; [1917] W. C. & Ins. Rep. 164;

10 B. W. C. C. 220; 116 L. T. 609;

[1917] W. N. 97; 33 T. L. R. 247;

61 S. J. 350

Employers' premises—Going to work—Slip on tram rail—Rails properly laid—Peril attached to particular location in which workman is obliged by employment to be—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.

A boy going by his usual and proper way to his work slipped on a tram rail in his employers' premises, and fell, injuring his face. The tram rails were properly laid and packed:—

Held, that the accident arose “out of” and “in the course of” the employment within s. 1, sub-s. 1, of the Workmen's Compensation Act, 1906, inasmuch as it happened on the employers' premises by reason of a peril attached

WORKMEN'S COMPENSATION (Accident arising out of and in the Course of Employment)
—continued.

to those premises. *MARSH v. POPE & PEARSON, LD.* - C. A. 86 L. J. (K. B.) 1349; [1917] W. C. & Ins. Rep. 287; 117 L. T. 456; [1917] W. N. 262; 33 T. L. R. 523; 62 S. J. 9

Employers' premises—Miner slipping on some ice while leaving colliery premises—Common peril—Peril attached to particular location in which by obligation of service workman was placed—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.

A miner, who had left the pit and was returning home, but while still on the colliery premises, at an early hour in the morning, when it was quite dark and very frosty, slipped on some ice and fell on a ry. siding and injured himself:—

Held, that, although the peril of slipping was a peril to which every one in the country round was liable, yet, inasmuch as it was attached to the particular location in which by the obligation of service the workman was placed, the injury resulting therefrom was caused by an accident "arising out of as well as in the course of his employment," and he was therefore entitled to compensation.

Simpson (or Thom) v. Sinclair [1917] A. C. 127; 86 L. J. (P. C.) 102; [1917] W. C. & Ins. Rep. 164 applied. *WALSH v. LAMPTON AND HETTON COLLIERIES* - C. A. 86 L. J. (K. B.) 1346; [1917] W. C. & Ins. Rep. 289; 117 L. T. 454; [1917] W. N. 250; 33 T. L. R. 504; 61 S. J. 611

Employers' premises—Woman crossing employers' yard to convenience—Slipping on small piece of wood lying in yard—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.

A woman had to cross a yard which was common to her employers' premises and the adjoining premises of another employer in order to go to the only women's convenience available for her, which was in the adjoining premises. In returning from the convenience she slipped on a small piece of wood lying in the yard, and injured herself severely. The yard was in good repair. The piece of wood had nothing to do with the employment:—

Held, that the accident arose "out of" the employment within s. 1, sub-s. 1 of the Workmen's Compensation Act, 1906.

Simpson (or Thom) v. Sinclair [1917] A. C. 127 applied.

Craske v. Wigan [1909] 2 K. B. 635 distinguished. *FEARNLEY v. BATES & NORTHCLIFFE, LD.* - C. A. 86 L. J. (K. B.) 1000; [1917] W. C. & Ins. Rep. 207; 10 B. W. C. C. 308; 117 L. T. 193; [1917] W. N. 170; 61 S. J. 506

Machine—Workgirl removing obstruction from machine while in motion—Not her machine—Girls in the habit of so removing obstructions—No prohibition against practice—Hand caught between rollers and injured, necessitating amputation—Workmen's Compensation Act, 1906, s. 1, sub-s. 1.

WORKMEN'S COMPENSATION (Accident arising out of and in the Course of Employment)
—continued.

A girl and her mate were employed as preparers at a ropework, and were working an intermediate frame. The foreman sent other employees to take charge of the frame. The girl and her mate moved to an adjoining, a finishing, frame. Shortly afterwards, when passing the intermediate frame on her way to see the foreman, the girl noticed on it some manilla threads becoming entwined on the rollers. Without being asked by the employees at the frame she attempted, as was customary and not prohibited, to remove them. Her arm was crushed in the machinery and had to be amputated:—

Held, that there was no evidence before the arbitrator on which he could find that the girl injured was disentitled to an award of compensation. *BEATTIE v. TOUGH & SONS*

Ct. Sess. (Sc.) 10 B. W. C. C. 447; [1917] W. C. & Ins. Rep. 93

Proximate cause—Contract—Risk reasonably contemplated when entering into—Compensation—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.

A. B. was employed as a "boots" in a hotel. His duties were to attend all trains and to assist such hotel guests as might arrive at, or depart from, the station. He was bound to be present on the platform on the business of his employers whenever a train was arriving or departing. On the occasion of the accident the train for which he waited was late, owing to a snowstorm; and while walking along the platform to get to the hotel 'bus outside the station he slipped, the platform being covered with snow. By reason of the slip he fell on the rails, which were about 3½ feet lower than the platform. One of his legs was fractured by the fall:—

Held, that the accident arose out of and in the course of his employment, and that the applicant was entitled to compensation.

When costs are directed by the arbitrator to be taxed on the higher equity scale, the expenses allowed to any one witness must not exceed 5*l.* *BLAKE v. RAMSAY* - C. A. (Ir.) [1917] W. C. & Ins. Rep. 84; 10 B. W. C. C. 500

Ship's engineer returning from leave drowned in dock where his ship was—Docks under control of naval and military authorities—Workmen's Compensation Act, 1906, s. 1, sub-s. 1.

A ship was lying beside a quay in docks which were under the control of the naval and military authorities. The docks, though normally open to the public, were during the war closed to all except, inter alia, those who had business in the docks and held a pass which enabled them to pass the guard at the gates. The ship was chartered to the Admiralty. Her engineer, who held a pass, having gone ashore with leave for purposes of his own, on his return passed the guard about 10.30 p.m. on a very dark night in Feb. Stringent lighting restrictions prevailed. To reach the ship the engineer had to traverse the quay. He did not return, and his body was subsequently found in the

WORKMEN'S COMPENSATION (Accident arising out of and in the Course of Employment) —continued.

water about seventy yards from the actual place of access to the ship from the quay:—

Held, that the accident arose out of the employment, in respect that but for his employment the workman could not have been upon the quay. *OFFICER v. CHARLES R. DAVIDSON & Co.* - Ct. of Sess. (Sc) 10 E. W. C. C. 480

Special risk—Builder's assistant in course of employment gets lift in cart—Injury by being thrown out of cart—Accident arising out of employment—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.

A workman employed as a builder's assistant had to take a window frame, weighing some three stones, to a house two miles away, and, there being no cart belonging to his employer available, was told to manage as best he could. He started to walk to the house, carrying the frame on his shoulders, but after a time came on a pony and cart standing by the wayside, and, as the cart was going his way, was offered a lift. He put the frame into the cart, and was getting in himself, when the pony bolted, and he was thrown out and injured:—

Held, that the accident happened while the workman was doing work within the scope of his employment, and was due to a special risk incidental to the employment, and that he was therefore entitled to compensation under the Workmen's Compensation Act, 1906. *MULLINGER v. BIDEWELL* - [1917] W. C. & Ins. Rep. 51; 10 B. W. C. C. 104

Street risk—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.

Where a workman is sent into the streets on his employer's business, whether habitually or occasionally, and whether on foot or on a bicycle, or on an omnibus or a car, and he meets with an accident by reason of a risk of the streets to which his employment exposes him, the accident arises out of as well as in the course of his employment; and it is immaterial that the risk which caused the accident is one which is shared by all members of the public using the streets under the like conditions.

The view of the First Div. of the Ct. of Sess. in Scotland upon this point, as expressed in *M'Neice v. Singer Sewing Machine Co.*, 1911 S. C. 12, *Hughes v. Bett*, 1915 S. C. 150, and *White v. Avery*, 1916 S. C. 209, preferred to the view of the C. A. in England, as expressed in *Pierce v. Provident Clothing and Supply Co.* [1911] 1 K. B. 997, *Sheldon v. Needham* (1914) 7 B. W. C. C. 471, and *Stade v. Taylor* (1915) 8 B. W. C. C. 65.

A boy in the employment of a firm of builders was ordered to go through the streets of London on a bicycle to fetch some plaster. He came into collision with a motor car and was injured:—

Held—(1.) that the accident arose out of the employment; (2.) that, the facts being not in dispute, this was a question not of fact, but of law.

Per Lord Shaw of Dunfermline: It is the duty of the arbitrator to make definite findings of fact.

WORKMEN'S COMPENSATION (Accident arising out of and in the Course of Employment) —continued.

Decision of the C. A. [1916] 2 K. B. 1 reversed. *DENNIS v. WHITE (A. J.) & Co.* - H. L. (E.) [1917] A. C. 479; 86 L. J. (K. B.) 1074; 10 B. W. C. C. 280; [1917] W. C. & Ins. Rep. 247; 116 L. T. 774; [1917] W. N. 203; 33 T. L. R. 434; 61 S. J. 558

Transit from ship to shore—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.

A carpenter, who was employed on a barge lying in dock, after finishing his day's work, started on a dark night to walk along the quay to the dock gates, but fell off the quay and was drowned. The dock was private property and was not open to the public, but the man's employers and their workmen had leave to pass through the dock on their way to and from the barge.

A claim for compensation by the widow was disallowed by the county court judge on the ground that at the time of the accident the relationship of master and servant had ceased:—

Held, that, inasmuch as the man was on the dock premises solely by virtue of his contract of service, the accident arose out of and in the course of the employment.

Dissenting judgment of *Romer L.J.* in *Holness v. Mackay & Davis* [1899] 2 Q. B. 319 approved *per Lord Finlay L.C.*

Decision of the C. A. [1916] 2 K. B. 803 affirmed. *JOHN STEWART & SON (1912), Ltd. v. LONGHURST* - H. L. (E.) [1917] A. C. 249; 86 L. J. (K. B.) 729; 10 B. W. C. C. 266; [1917] W. C. & Ins. Rep. 305; 116 L. T. 763; [1917] W. N. 120; 33 T. L. R. 285; 61 S. J. 414

Risk not Incidental to Employment.

Added risk—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.

The widow of a workman employed on a ry. claimed compensation for the death of her husband. On the day of his death the deceased, with other workmen, was under orders to travel by train to a place further down the line to work there. The men arrived at a station where they had to change, and, having some time to wait for the next train, they started to cross the lines to a mess-room on the opposite side of the station where they could get hot water for their breakfast, which they had brought with them. On his way to the mess-room the deceased attempted to pass under the trucks of a standing goods train. The train moved and he was killed. The mess-room could have been reached without crossing the lines, but this way took longer, and the men for their own convenience habitually used the way across the lines. The county court judge found that the accident did not arise out of or in the course of the employment:—

Held, that the deceased, in attempting to pass under the trucks, was exposing himself to an added peril and was not acting within the sphere of his employment.

WORKMEN'S COMPENSATION (Accident arising out of and in the Course of Employment)—*continued*.

Gane v. Norton Hill Colliery Co. [1909] 2 K. B. 539 distinguished.

Decision of the C. A. [1916] W. C. & Ins. Rep. 244 reversed. LANCASHIRE AND YORKSHIRE RY. CO. v. HIGGLEY - H. L. (E.) [1917]

A. C. 352; 86 L. J. (K. B.) 715; [1917] W. C. & Ins. Rep. 179; 10 B. W. C. C. 241; 116 L. T. 767; [1917] W. N. 119; 33 T. L. R. 286; 61 S. J. 397

Air raid—Injury in—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.

Appeal from an award of the judge of the Bow County Court, sitting as arbitrator under the Workmen's Compensation Act, 1906.

The applicant was a potman in the employment of the respondent. He was working for the respondent cleaning a brass plate on the street side of the public-house in which he was a potman. A bomb from enemy aircraft fell in the street, and the applicant was slightly injured by the concussion. The case was heard by the county court judge upon admissions embodying the facts above mentioned, but without further evidence. He awarded compensation under the Act, and the employer appealed.

The C. A. allowed the appeal, holding that there was no evidence that the workman was exposed to any special risk incident to his employment, and accordingly that the accident did not arise out of his employment. ALLCOCK v. RODGERS - C. A. [1917] W. N. 353

Prohibited act—Dangerous place on premises—Workmen forbidden to go there—Workman's ignorance of prohibition—Mistaken belief that he ought to go there—Honest but unreasonable belief—Accident not arising "out of" employment—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.

A man was employed to fill skips with ore. When a skip was full it was his duty to call for a crane to lift it. If the call was not answered, it was his duty to find the crane boy. The crane travelled across a structure which was placed over a street in order to connect two parts of the employers' premises. This structure, although termed a "bridge," was only designed to carry the travelling crane. One dark evening the man called for the crane, got no reply, went up on to the "bridge" to find the crane boy, and fell through a trapdoor in the "bridge" to the street below and was injured. Workmen were forbidden to go on to the "bridge"; but the man was ignorant of this prohibition, and honestly believed that he ought to go on to the "bridge." It was obviously dangerous to go on to the "bridge" at the time. The man ought to have hailed the crane boy from a safe position near the "bridge":—

Held, that the accident did not arise "out of" the employment within s. 1, sub-s. 1, of the Workmen's Compensation Act, 1906.

If a risk is not in fact imposed by the employment, a workman's mistaken belief that it is imposed will not make it a risk of the employ-

WORKMEN'S COMPENSATION (Accident arising out of and in the Course of Employment)—*continued*.

ment. WARDLE v. H. G. ENTHOVEN & SONS, LD. - C. A. 86 L. J. (K. B.) 309; [1917] W. C. & Ins. Rep. 18; 10 B. W. C. C. 79; 116 L. T. 103; 33 T. L. R. 123; 61 S. J. 170

Prohibited act—Regulation under Coal Mines Act, 1911 (1 & 2 Geo. 5, c. 50), s. 86—*Accident in returning to work—Scope of employment—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1, sub-s. 1.

A fitter's labourer at a colliery, being desirous of relieving himself whilst suffering from diarrhoea, went across some ry. lines to a dirt tip, and there relieved himself in the open. On his way back to work he was run over in crossing the ry. lines and seriously injured. The colliery owners provided four sets of privies for surface workers; and although one set was on the dirt tip, one at least of the others, which was especially intended for men working at the fitting shop, could be reached from there, without crossing any ry. lines. By a regulation under the Coal Mines Act, 1911, s. 86, which was exhibited about the mine, surface men were forbidden to relieve themselves, except in the conveniences provided. The only excuse given by the man for not using the privies was that they might have been full, but he admitted that he did not go to see. On an application by the man for compensation under the Workmen's Compensation Act, 1906:—

Held, that the county court judge was justified in drawing the inference that the workman had met with the accident outside the sphere of his employment, and that the accident did not therefore arise out of the employment. SENIOR v. BRODSWORTH MAIN COLLIERY CO.

C. A. 86 L. J. (K. B.) 1387; [1917] W. C. & Ins. Rep. 284; 117 L. T. 496; 61 S. J. 676

Prohibited act—Regulations made under s. 86 of the Coal Mines Act, 1911 (1 & 2 Geo. 5, c. 50)—*Sphere of employment—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 1, sub-s. 1.

A workman employed as a horse-driver in the employers' colliery was seriously and permanently injured by being struck by a projecting bar of the roof of one of the mine levels of the colliery whilst riding on a truck contrary to the rules of the colliery. His duty was to walk by the side of the horse and to scotch the wheels of the truck with a stick provided for that purpose when the truck was descending an incline and so check its speed. The practice of riding on trucks was prohibited by the rules of the colliery, and also by one of the mine regulations made by the Secretary of State under s. 86 of the Coal Mines Act, 1911, which provided: "25A. No person below ground shall ride upon any animal, nor, except by permission of the manager or undermanager, upon any tram, tub or other contrivance drawn by a horse or other animal." No permission to ride on the truck had been given to the workman by the manager or undermanager. Upon a claim for compensation under the Workmen's

WORKMEN'S COMPENSATION (Accident arising out of and in the Course of Employment)—continued.

Compensation Act, 1906, the county court judge found that the accident did not arise out of and in the course of the employment:—

Held, that the workman in riding on the truck was acting outside the sphere of his employment and that, therefore, the accident did not arise out of his employment.

Barnes v. Nunnery Colliery Co. [1912] A. C. 44 and *Herbert v. Samuel Fox & Co.* [1916] 1 A. C. 405 applied. *MAYDEW v. CHATTERLEY-WHITEFIELD COLLIERIES, LD.* - C. A. [1917] 2 K. B. 742; 86 L. J. (K. B.) 1353; [1917] W. C. & Ins. Rep. 277; 117 L. T. 460; [1917] W. N. 251; 61 S. J. 645

Joiner employed to make wheels—Planing wood in wood-working machine—Special machine men provided—Other workmen not entitled to use the machines—Accident not arising “out of” employment—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.

A joiner employed to make gun-carriage wheels went and planed a piece of wood in a planing machine, and while so doing his left hand was caught in the machine, and he lost three fingers. In the works in which he was employed special machine men were provided to work the wood-working machines, and it was well known to the workman that the use of these machines was confined to the machine men, although there was no express prohibition against their user by other workmen:—

Held, that the accident did not arise “out of” the employment within s. 1, sub-s. 1, of the Workmen's Compensation Act, 1906. *ANDERSON v. SIR W. G. ARMSTRONG, WHITWORTH & CO.* [1917] W. C. & Ins. Rep. 71; 10 B. W. C. C. 67

Miner—Kept waiting in draught of cold air in shaft of mine—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.

A workman employed by the respondents in their coal mine came to the bottom of the shaft at the end of his shift to be taken to the surface. By reason of a slight accident the cage was an unusually long time in coming down, and the workman had to remain at the bottom of the shaft exposed to a current of cold air. In consequence he contracted a chill from the effects of which he died:—

Held, that he had not been injured by accident arising out of and in the course of his employment within the meaning of the Workmen's Compensation Act, 1906.

Decision of the First Div. of the Ct. of Sess. in Scotland 1916 S. C. 719, affirmed. *DOCHERTY OR LYONS v. WOODLEE COAL AND COKE CO.*

H. L. (Sc.) 86 L. J. (P. C.) 137; 10 B. W. C. C. 416; [1917] W. C. & Ins. Rep. 265; 117 L. T. 65; [1917] W. N. 151; 61 S. J. 490

Parlourmaid mending skirt—Answering parlour bell leaving needle in skirt—Injury thereby to knee—Accident not arising “out of” the employment—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.

A parlourmaid was darning a rent in her skirt when the parlour bell rang. She went to

WORKMEN'S COMPENSATION (Accident arising out of and in the Course of Employment)—continued.

answer it, leaving the darning-needle sticking in her dress, with the result that it ran into her knee and injured her severely:—

Held, that the accident did not arise “out of” the employment within s. 1, sub-s. 1, of the Workmen's Compensation Act, 1906. *GRIFFITHS v. ROBINS* - C. A. [1917] W. C. & Ins. Rep. 44; 10 B. W. C. C. 90

Workman leaving work—Accident on railway—Use of railway line—Not a way of necessity—Permission by railway company to use line—Permission not given at request of employers—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.

A colliery workman at the end of his day's work left the colliery and went to catch a train at a ry. station about 700 yards away. He left the colliery by a road, and about half way to the station got on to the ry. line, and was continuing his way along the line to the station when he was caught by a train and killed. He could have gone all the way to the station by the road, which was a very slightly longer route. The colliery men generally made use of the ry. line in going to and from their work. They used it by permission of the ry. co., but this permission was not given at the request of the employers or by arrangement with them:—

Held, that the accident did not arise either “out of” or “in the course of” the employment within s. 1, sub-s. 1, of the Workmen's Compensation Act, 1906: *WHITTALL v. STAVELEY COAL AND IRON CO., LD.* - C. A. 86 L. J. (K. B.) 985; [1917] W. C. & Ins. Rep. 202; 10 B. W. C. C. 298; 117 L. T. 130; [1917] W. N. 179; 61 S. J. 523

Accident—Claim—Notice.

Collier—Death from obscure disease—Disease attributable to accident—No notice of accident as soon as practicable—Prejudice to employers—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), ss. 1, 2.

On Apr. 18, 1916, a collier was dragging a rail along when he backed into a prop, with the result that the rail struck him a blow on the fleshy part of the thigh. He went on working until May 29, although suffering pain in the thigh. He then saw his panel doctor, who treated him for contused tissue. There was at this time no external mark on the man's thigh. He grew worse, and on Jun. 10 a consultant was called in, who diagnosed an obscure disease called osteomyelitis. An immediate operation was attempted, but the man died the next day. No written notice of the accident was given until Jun. 12, although a verbal report of it was given on or about May 29. The panel doctor gave evidence that the disease would be caused by a slight strain or a blow, and should develop within a week, but thought that the disease was probably connected with the accident. The consultant said it was often impossible to discover a cause for the disease. As a rule it appeared within forty-eight hours after an injury,

WORKMEN'S COMPENSATION (Accident—Claim—Notice)—continued.

and it could not therefore be attributed in this case to the accident. No evidence was called by the employers to prove that they were prejudiced by the delay in giving notice of the accident; and the consultant was not asked whether he thought he could have diagnosed the disease at an earlier stage:—

Held, that there was evidence to support a finding by the county court judge that the disease was attributable to an accident on Apr. 18, arising out of and in the course of the employment, and that there was also evidence from which the county court judge could reasonably infer, in the absence of evidence to the contrary by the employers, that the employers were not prejudiced by the failure to give notice of the accident as soon as practicable. *MILLS v. DINNINGTON MAIN COAL CO.* - - C. A.

86 L. J. (K. B.) 231; [1917] W. C. & Ins. Rep. 11; 10 B. W. C. C. 153; 116 L. T. 181; 61 S. J. 202

Delay in giving notice of the accident—Reasonable cause—Prejudice to employers—Onus of proof—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 2.

A workman met with an accident on Nov. 27, 1915, by a truck falling upon his left foot. He had previously had trouble with his toes, and, although they were swollen and painful after the accident, he went on working till Dec. 13, only treating the foot with fomentations. He then had to stop work, and saw a doctor, but did not tell him of the accident; and the doctor treated him for gout. Later he told the doctor of the accident, and the doctor then diagnosed periostitis. Shortly after he saw another doctor, who treated him; but it was not until after some days that the doctor diagnosed gangrene. Notice of the accident was not given until Jan. 13, 1916, and on Jan. 19 the employers' doctor saw the man and diagnosed gangrene. In the result the man's foot had to be amputated. The workman claimed compensation under the Workmen's Compensation Act, 1906:—

Held, that there was evidence on which the county court judge could hold that notice of the accident was not given as soon as practicable in accordance with s. 2 of the Act, and that the delay in giving notice was not occasioned by reasonable cause, and that, the onus being on the workman to show that the employers were not prejudiced by the delay in giving notice, the county court judge was justified in dismissing the application, as, after weighing the evidence, he was unable to say whether or not the employers were prejudiced by being deprived of an opportunity of having the man treated by their doctor at an earlier stage. *SELKIRK v. NATIONAL RADIATOR CO.* - - C. A. [1917]

W. C. & Ins. Rep. 99; 10 B. W. C. C. 107

Munition worker—Letter posted to employers—Presumption that letter received—Evidence in rebuttal—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 2.

A claim for compensation under the Workmen's Compensation Act, 1906, is not "made"

WORKMEN'S COMPENSATION (Accident—Claim—Notice)—continued.

by a workman within s. 2 of the Act until it has been communicated to the employers; but when a letter making a claim has been properly addressed, stamped, and posted, a presumption arises that it has been delivered, which it is for the employers to rebut.

On and prior to Sept. 18, 1915, a munition worker met with accidents arising out of and in the course of her employment whereby one of her eyes was injured, and after working on for about a fortnight became incapacitated until the following Jul. On Mar. 22, 1916, the employers received notice of claim for compensation under the Workmen's Compensation Act, 1906, but refused to accept it, as it was not made within six months of the accident as required by s. 2 of the Act. The worker, however, alleged that she had posted a notice of claim to the works manager on Dec. 29, 1915. The employers called evidence to show that all letters were received by their correspondence department and sorted and remitted to the various departments, and proved that no such letter had been received by the claims department. No one was called from the correspondence department. The county court judge held that a notice of claim had been duly posted to the employers on Dec. 29, 1915, and made an award in favour of the worker without making it clear by the judgment whether he was of opinion that the letter had been received and lost in the correspondence department or lost in the post. He also took the view that in any case the failure to give notice within six months was occasioned by reasonable cause:—

Held by the C. A., that there was no ground on which the failure to give notice of claim within six months could be held to be occasioned by reasonable cause; but *held* by the C. A. (Scrutton L.J. dissenting), that the county court judge must be taken to have decided that the letter had reached the employers' correspondence office and been lost there.

Per Scrutton L.J.: There has been no satisfactory trial in this case, and it ought to be remitted for trial to another judge. *WATTS v. VICKERS, LD.* - - C. A. 86 L. J. (K. B.) 177;

[1917] W. C. & Ins. Rep. 24; 10 B. W. C. C. 126; 116 L. T. 172; 33 T. L. R. 137

Accident—Evidence.

Burden of proof—Deal carrier—Injury to knee—Arthritis—Improper medical treatment—Novus actus interveniens—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.

Where a workman has been injured by accident arising out of and in the course of his employment, and claims compensation under the Workmen's Compensation Act, 1906, the onus of proving that the existing incapacity is no longer due to the accident, but is attributable to a novus actus interveniens, such as improper medical treatment owing to an incorrect diagnosis, is on the employer.

A deal carrier met with an accident arising out of and in the course of his employment, causing injury to one of his knees. He was treated at a local infirmary for strain, but

WORKMEN'S COMPENSATION (Accident—Evidence)—continued.

subsequently the knee was X-rayed, and it was then found that a bone in the knee had been fractured. In the result the man was incapacitated from arthritis, but the county court judge was unable to decide whether the existing incapacity of the workman was still due to injury by accident arising out of and in the course of the employment or was due to improper treatment of the injury :—

Held, that the workman was entitled to compensation.

Marshall v. Orient Steam Navigation Co. [1910] 1 K. B. 79 applied. *BOWER v. MEGGITT & JONES* - C. A. 86 L. J. (K. B.) 463 ; [1917] W. C. & Ins. Rep. 40 ; 10 B. W. C. C. 146 ; 116 L. T. 178

Burden of proof—Disappearance of seaman—No direct evidence—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.

A seaman disappeared during his spell of duty at the wheel in the wheel-house in the centre of the flying-deck, and was not afterwards seen. The night was rough, the sea choppy, but the vessel was steady. The flying-deck was protected by a railing. There was no direct evidence as to how the man came by his death, and, in spite of the presumption against suicide, the county court judge was unable to draw the inference that the death was due to an accident ; and he found as a fact that the death was not the result of an accident arising out of and in the course of the deceased's employment :—

Held, that the finding of the county court judge simply meant that the onus of proof on the applicant for compensation had not been discharged, and that in the circumstances his conclusion was right. *ROURKE v. HOLT & Co.*

C. A. (Ir.) [1917] 2 I. R. 318

Burden of proof—Man taking tubs down incline—Death—Heart disease—Arising out of employment—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1.

A workman in a colliery started to take two tubs down an incline of one in twenty on tram lines, and went in front of them to hold them back. Soon afterwards he was found lying dead about thirty feet down the slope with his feet under the foremost tub, which was pressing against his right leg. There was a dispute whether the man's body was preventing the tubs from running down the slope, or whether they had been stopped by being "scotched." The man had a weak heart, in an advanced state, with almost total destruction of the mitral valve ; and the evidence was that any pressure might have caused his death, or that he might have died simply as the result of the disease. The workman's dependants brought these proceedings, claiming compensation under the Workmen's Compensation Act, 1906. The county court judge held that the onus of proving that the man's death was due to an accident arising out of and in the course of the employment had not been discharged, and dismissed the application :—

Held, that he had not misdirected himself. *Barnabas v. Bersham Colliery Co.* (1910) 103

WORKMEN'S COMPENSATION (Accident—Evidence)—continued.

L. T. 513 applied. *MAXWELL v. RUABON COAL AND COKE CO.* - C. A. 86 L. J. (K. B.) 428 ; [1917] W. C. & Ins. Rep. 36 ; 10 B. W. C. C. 138 ; 116 L. T. 176

Burden of proof—Seaman found drowned—Inference as to cause of death—Surmise or conjecture—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.

A fireman on a ship in port at Aberdeen went ashore at about 6.30 p.m. on Dec. 21, 1916, with another seaman. He had no work which required his presence on board until the next day when the ship sailed, but there was evidence that he was a steady, respectable man, who never stayed ashore from his ship at night. The two men went to the theatre, and left again about 8.30 p.m. with a friend they had met. They then all went and got some drinks, and shortly afterwards started to return to the ship. After they had gone a little way one of the men with the fireman collapsed, and had to be helped along by his friends to the ship ; but when they were still some distance from the ship the fireman left them, and turned back saying he was not going aboard at present. He was never seen alive again, but some weeks later his body was found in the dock in which the ship had lain a short distance ahead of where the bow of the ship had been. On an application by the dependants of the deceased for compensation under the Workmen's Compensation Act, 1906 :—

Held, that the county court judge was not entitled to draw the inference that the man's death was due to an accident arising out of his employment. There was no evidence from which it could reasonably be inferred that the man met with his death in returning to his ship the same night and after he had reached the quayside. *SPENCER v. LIBERTY (OWNERS)*

C. A. 86 L. J. (K. B.) 1381 ; [1917] W. C. & Ins. Rep. 293 ; 117 L. T. 449 ; 61 S. J. 645

Estoppel—Payment of compensation under mistake—Proceedings to recover further compensation—Boy "larking"—Denial of liability on that ground—Doctrine of estoppel inapplicable—Accident not arising "out of and in the course of" the employment—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.

A boy had his hand badly cut with a knife. He alleged that the injury was caused by accident. His employer, believing him, paid him compensation for a time. Subsequently the employer, being informed that the injury had been occasioned by the boy "larking" with another boy, refused to continue the compensation. The boy then took proceedings, claiming further compensation. The employer denied liability on the ground of the "larking." The arbitrator found that the injury had been occasioned by the "larking" but held that the employer was estopped from denying liability, and made his award in favour of the boy :—

Held, that the doctrine of estoppel was inapplicable, and that the award must be set aside. *HARRISON v. FEATHERSTONE* - C. A. [1917] W. C. & Ins. Rep. 74 ; 10 B. W. C. C. 54

WORKMEN'S COMPENSATION (Accident—Evidence)—continued.

Incapacity—Injury by accident to foot—Unnecessary amputation of toe—Incapacity resulting therefrom and not from accident—Non-liability of employers—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., clause 1 (b).

A workman's right foot was injured while he was working in the employ of a firm of engineers as a slinger. After he had been incapacitated for work for some two years his doctor amputated a toe of the foot. In arbitration proceedings medical evidence was given that the amputation was unnecessary. The arbitrator so found, and dismissed the man's application for compensation on the ground that his present incapacity was due to the operation, and not to the accident:—

Held, that the arbitrator had rightly directed himself, and that there was evidence to support his finding. *Lakey v. Blair & Co.*

C. A. [1917] W. C. & Ins. Rep. 78 ;
10 B. W. C. C. 58

Incapacity—Slight abrasion of finger—Blood-poisoning three days after—No other cause shown—“Notice . . . as soon as practicable”—Inference of fact—No notice for three and a half months—“Delay”—“Reasonable cause”—“Employer not prejudiced”—Workmen's Compensation Act, 1906, s. 1, sub-s. 1; s. 2.

On Sept. 17, 1916, a workman's finger was struck by a small piece of screw head. He picked out the burr. There was no blood or wound or anything that could then in the ordinary sense be called an accident. The injury appeared to be quite trivial. He continued work for three days, when he had to stop, and consulted a doctor. This doctor first attributed his incapacity to influenza, but soon after stated that he was suffering from blood-poisoning. On Oct. 24 he sent a letter to the employers stating that he had contracted blood-poisoning while in their employment. There was nothing in the letter to show that the man attributed the blood-poisoning to the injury of Sept. 17. The doctor who had first attended him died in Jan., 1917, and a new doctor was called in who traced the blood-poisoning to the injury of Sept. 17. Thereupon, on Jan. 5, formal notice was sent to the employers. The county court judge found that notice had been given as soon as practicable, and stated that, if not, there was reasonable cause for the delay, and the employers had not been prejudiced. He also drew the inference that the blood-poisoning was the result of the injury on Sept. 17, and found the same to be an accident within the meaning of the Act:—

Held, there was evidence to support the findings and no misdirection. *White v. Ford Motor Co. (England)* - - - C. A.
10 B. W. C. C. 354

Insanity—Injury to finger—Insanity supervening—Suicide—Workmen's Compensation Act, 1906, Sched. I., clause 1 (a).

A workman met with an accident whereby his finger was injured and he became totally incapacitated for work. Insanity followed as a result of the accident, and he afterwards com-

WORKMEN'S COMPENSATION (Accident—Evidence)—continued.

mitted suicide. The arbitrator found that his death was the result of an accident arising out of and in the course of his employment:—

Held, that there was evidence on which the arbitrator was entitled to so find. *Graham v. Christie or Fleming* - - - Ct. Sess. (Sc.)

10 B. W. C. C. 486

Agreement.

See below, Compensation, col. 502.

Appeal.

“Application—Time—Act of Sederunt—Sheriff to state a case—decision submitted to either division of Court of Session”—Process—Date of award—Workmen's Compensation Act, 1906, Sched. II., s. 17 (b)—Codifying Act of Sederunt, 1913, c. XIII., s. II. (2.), and 17 (a).

On Nov. 11, 1916, an arbitrator under the Workmen's Compensation Act, 1906, issued an award, which, however, had not the date filled in. On November 13 it was handed by an assistant of the sheriff-clerk to the workman's agent, with the remark that the award had been issued that day, and the agent in the presence of the assistant then filled in Nov. 13 as the date of the award. No notice of the award was sent to the workman or his agent. On Nov. 20 the workman, who wished to appeal against the award, lodged a minute craving the arbitrator to state a case for appeal. The arbitrator refused on the ground that the minute was not timeously lodged, and that the Codifying Act of Sederunt L. XII. ss. 11 (2.) and 17 (a), were peremptory and left him no discretion:—

Held, in a petition by the workman for an order ordaining the minute to be received, that the date of issue of the award was Nov. 13, and the minute timeously lodged, and prayer of petition granted.

The Workmen's Compensation Act, 1906, Sched. II., s. 17, enacts, in the application of that schedule to Scotland: “Any application to the sheriff as arbitrator shall be heard, tried, and determined summarily in the manner provided by s. 52 of the Sheriff Courts (Scotland) Act, 1876 . . . subject to the declaration that it shall be competent to either party within the time and in accordance with the conditions prescribed by Act of Sederunt to require the sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either division of the Court of Session, who may hear and determine the same and remit to the sheriff with instruction as to the judgment to be pronounced, and an appeal shall lie from either of such divisions to the House of Lords.”

The Codifying Act of Sederunt, 1913, L. xiii. enacts (s. 11), sub-s. 2: “An award by a sheriff under the Act, or a certified copy thereof, shall be forthwith recorded by the sheriff-clerk in the said register as if it were a memorandum, and written notice of such recording and of the terms of the award shall be forthwith sent by him to the parties interested.” Sect. 17 (a): “An application to a sheriff to state a case on a question of law determined by him shall be

WORKMEN'S COMPENSATION (Appeal) —
—continued.

made by minute lodged in the process within seven days after the sheriff has issued his award. . . .” *In re HOOLACHAN*

Ct. Sess. (Sc.) 10 B. W. C. C. 442 ;
[1917] W. C. & Ins. Rep. 122

Arbitration.**Award.**

Correction—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58)—Workmen's Compensation Rules, 1913, 1914, r. 30.

An award is not made until it is signed, and the arbitrator may therefore alter his award at any time up to its being signed. *HEATH v. HACKNEY MARSHES NATIONAL PROJECTILE FACTORY* - C. A. [1917] W. C. & Ins. Rep. 217 ;
10 B. W. C. C. 361

Suspensory award—Rigger—Amputation of toe—Earning capacity restored—Improbability of future incapacity—No suspensory award—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., clause 1 (b).

A rigger met with an accident in the course of his employment, with the result that half the end joint of the big toe of his right foot had to be amputated. Liability was admitted, and full compensation for total incapacity paid for a time, when it was stopped, as the man had resumed his old work at full wages. He, however, took proceedings claiming a suspensory award. Except for a statement by his doctor, that all stumps are liable to be affected by cold weather, there was no evidence of any probability of future incapacity:—

Held, that a suspensory award ought not to be made. *WARDELL v. CARGO FLEET IRON CO.* C. A. [1917] W. C. & Ins. Rep. 77 ;
10 B. W. C. C. 124

Dispute.

Amount of compensation agreed—Duration—Total or partial incapacity—Question as to duration of compensation—Jurisdiction to arbitrate—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 3.

Employers, whose servant, a press worker, had been injured in their employment, admitted liability to pay her a certain weekly payment as compensation, and were willing that a memorandum should be recorded of an agreement by them to pay compensation at that rate “during total incapacity.” On the servant's behalf it was contended that under the memorandum of agreement the payment should not be limited by the words “during total incapacity,” but should be stated to continue until ended, diminished, redeemed, or suspended in accordance with the Workmen's Compensation Act, 1906. As the employers refused to agree to this contention, the matter was submitted to the county court judge, who held that a question had arisen as to the duration of the compensation, and awarded the agreed compensation to be paid during total or partial incapacity until ended, diminished, or redeemed, and ordered the employers to pay the costs:—

Held, on appeal, that the county court judge

WORKMEN'S COMPENSATION (Arbitration)—
continued.

had rightly decided that there was a question for arbitration under s. 1, sub-s. 3, of the Act, there being a dispute as to the duration of the compensation, and that the applicant was entitled to an award or agreement in the form proposed by her which would lay on the employers the burden of showing that the compensation should at some future date be diminished or suspended.

Higgins v. Poulson [1912] 2 K. B. 292 followed. *ROUND v. WATHEN & SON* - C. A. 86 L. J. (K. B.) 1011 ; [1917] W. C. & Ins. Rep. 134 ; 10 B. W. C. C. 35 ; 116 L. T. 97

“Question”—*Admission of liability to pay compensation—Dispute as to duration—Award of compensation—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1.*

Under the Workmen's Compensation Act, 1906, a workman who has met with an accident arising out of and in the course of his employment is entitled to an award of compensation to continue during total or partial incapacity for work, or until the same is ended, diminished, increased, or redeemed in accordance with the provisions of the Act, unless the employer makes an admission of liability which puts the workman in a position to record an agreement for the payment of compensation accordingly. It is not enough that the employer should admit liability to pay compensation during total incapacity, and tender the amount of compensation due ; but in such a case the workman is entitled to an award of compensation in the form stated above, a present question having arisen for arbitration, under s. 1, sub-s. 3, of the Act, by reason of a dispute as to the duration of the payment of compensation.

Payne v. Fortescue & Sons, Ltd. [1912] 3 K. B. 346 distinguished.

Cooper v. Wales, Ltd. [1915] 3 K. B. 210 applied. *SHADDICK v. PALMER'S SHIPBUILDING AND IRON CO.* - C. A. 86 L. J. (K. B.) 1017 ; [1917] W. C. & Ins. Rep. 225 ; 10 B. W. C. C. 364 ; 117 L. T. 259 ; [1917] W. N. 198 ;
61 S. J. 545

Claim.

See above, Accident—Claim, col. 494.

Compensation.**Agreement.**

Recorded agreement—Minor—Rate of compensation varying with current rate of wages and capacity of workman—Application for leave to issue execution—Jurisdiction—Fresh application for arbitration—Review—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58)—Workmen's Compensation Rules, 1913–1914, rr. 82, 84.

The applicant, while under twenty-one, met with an accident while working in the respondents' colliery in 1907. Liability was admitted and compensation paid till 1911, in which year the applicant attained twenty-one. In that year an agreement was made between the workman and his father and the employers, and duly recorded, whereby the employers agreed to find the workman light employment and pay him weekly what he could earn by working pit time

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at such employment, and in addition half the difference between that sum and what he would have earned at the current wages in the pit if he had remained uninjured. Compensation was paid under this agreement for five years. In 1916 disputes arose between the workman and the employers as to the amount which the workman could earn in the employment provided. The workman applied for a fresh arbitration. The county court judge dismissed the application, holding that he could not grant a fresh arbitration while there was a recorded agreement on the file, and that the workman's remedy was to apply for leave to issue execution. The workman appealed.

The C. A. dismissed the appeal, holding that no fresh arbitration could be entered upon while the agreement was on the file; and that the Workmen's Compensation Rules, r. 82, enabled the judge to decide, on an application to issue execution, the question what sum was payable under the agreement.

They also held that the case was not one for an application to review, as there was no change of circumstance, and the workman did not desire to alter the agreement.

Decision of county court judge affirmed. **MOAKES v. BLACKWELL COLLIERY CO.**

C. A. [1917] 1 K. B. 565; 86 L. J. (K. B.) 454; [1917] W. C. & Ins. Rep. 46; 10 B. W. C. C. 166; 116 L. T. 197; 33 T. L. R. 162; 61 S. J. 217

Settlement for lump sum before any weekly payment of compensation—Adult workman not under disability—Application to record agreement—Jurisdiction to refuse to record—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. II., clause 9.

Under the Workmen's Compensation Act, 1906, an adult workman not under a disability is at liberty, before any weekly payment of compensation has been made to him, to agree with his employer to accept a lump sum in satisfaction for his claim to compensation; and upon an application to the county court to record such an agreement, neither the registrar nor the county court judge has any jurisdiction to refuse to record it upon any of the grounds set out in clause 9 (d) of Sched. II. of the Act, but the registrar must record the agreement on being satisfied of its genuineness.

Where, therefore, on an application to record such an agreement, supported by both the workman and his employers, the registrar refused to record it on the ground of the inadequacy of the lump sum, and referred it to the county court judge, who refused to record it on the grounds, first, that the agreement was tainted by fraud; secondly, that the lump sum was inadequate; and, thirdly, that the agreement amounted to contracting out of the Act:—

Held, that both the registrar and county court judge had exceeded the limits of their jurisdiction, and that the agreement must be recorded.

Held, also, that on the facts there was no evidence of fraud, and that no county court judge ought to find fraud when it had not been

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suggested by the opposite side and when the person found guilty of fraud had had no opportunity of defending himself. **HUMSON v. CAMBERWELL B. C.** - C. A. 86 L. J. (K. B.) 558; [1917] W. C. & Ins. Rep. 144; 10 B. W. C. C. 400; 116 L. T. 523

Assessment.

Basis of calculation—“Average weekly earnings”—Concurrent contracts of service—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., clauses 1 (b), and 2 (a), (b).

The applicant, who was injured by the accidental fall upon him of a case of glass while in the employment of the respondents, was admitted by them to be entitled to some compensation, but the amount of same was in dispute. The average weekly earnings of the applicant in the employment of the respondents themselves prior to the accident were 22s., but the applicant, who had been working from time to time with other employers, claimed that the average should be calculated on the basis of his total earnings from all his employers, and that the contracts with these other employers were “concurrent” contracts:—

Held, that there were no concurrent contracts of service, and that the county court judge was right in taking into consideration only the payments earned from the respondents themselves. **PEOPLES v. THE BELFAST STEAMSHIP CO.** - C. A. (Ir.) 10 B. W. C. C. 495; [1917] W. C. & Ins. Rep. 318

Basis of calculation—Death—“Employment by same employer”—Interruptions by absence from work due to illness—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., pars. 1 (a) (i.), 2 (c).

Employment by the same employer, as defined by par. 2 (c) of the First Schedule to the Workmen's Compensation Act, 1906, means employment in the same grade, which is not interrupted by absence from work due to illness or any other unavoidable cause.

Dictum of Cozens-Hardy M.R. in **Perry v. Wright** [1908] 1 K. B. 441 (at p. 453), that in determining the meaning of “employment by the same employer” interruptions due to illness or any other unavoidable cause are to be disregarded, overruled.

Dictum of Fletcher Moulton L.J. (at p. 460) approved.

A workman who died from an injury by accident arising out of and in the course of his employment entered into the employment of a firm as a carter more than three years before the injury, but during those three years he was absent from work from time to time for an aggregate period of six months. His absence for the greater part of the period was due to illness or to accidental injury:—

Held, upon the construction of par. 1 (a) (i.) and par. 2 (c) of the First Schedule, that he was not in the employment of the same employer during the three years next preceding the injury from which he died, and, therefore, that the compensation payable to his dependants was to be calculated, not upon the basis of his actual

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earnings during the three years, but upon the basis of his average weekly earnings during the period of his actual employment since the last unavoidable interruption.

Decision of the C. A. [1915] 3 K. B. 97 reversed. (*GREENWOOD v. JOSEPH NALL & Co.*)

H. L. (E.) [1917] A. C. 1 : 86 L. J. (K. B.)

17 ; [1916] W. C. & Ins. Rep. 367 ;

10 B. W. C. C. 9 ; 115 L. T. 723 ;

[1916] W. N. 363 ; 33 T. L. R.

43 ; 61 S. J. 54

Continuity of employment—Strike—One week's absence from work—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., par. 1 (a).

A workman met with his death by accident on Mar. 10, 1916, while employed in a colliery belonging to the appellants. He had been in the employment of the appellants for many years in the same grade. On Jul. 12 a strike was declared by the miners as from Jul. 14. On Jul. 13 a Proclamation was made under the Munitions of War Act, 1915, the effect of which was that any man taking part in a strike would be guilty of an offence and liable to a fine. Notwithstanding the Proclamation the men, including the deceased, ceased work on Jul. 15, and remained out until the 22nd, when the strike was ended by the intervention of the Government and work was resumed under a fresh agreement dating back as from Jul. 15. On a claim for compensation by the man's dependants under the Workmen's Compensation Act, 1906 :—

Held, that the abstention from work during the week of the strike did not constitute a break in the employment, nor was it an "absence from work due to illness or any other unavoidable cause" within Sched. I., par. 2 (c).

Held, therefore, that the compensation must, under par. 1 (a) (i.) of the schedule, be calculated on the basis of the man's actual earnings during the three years next preceding the accident.

Jones v. Ocean Coal Co. [1899] 2 Q. B. 124 distinguished. *PRICE v. GUEST, KEEN & NETTLEFOLDS, LD.* - C. A. [1917] 1 K. B. 780 ;

86 L. J. (K. B.) 662 ; [1917] W. C. & Ins.

Rep. 157 ; 10 B. W. C. C. 203 ; 116

L. T. 585 ; [1917] W. N. 83 ;

33 T. L. R. 236 ; 61 S. J. 315

Incapacity—Amount of weekly payment—Regard to be had to "payment, allowance, or benefit" received from employer—Pension payable in respect of incapacity out of fund partly provided by employer—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., clause 3.

A fireman in the service of the Manchester Corporation Fire Brigade met with an accident by which he was permanently incapacitated. The corporation admitted their liability to pay compensation under the Workmen's Compensation Act, but contended that in fixing the amount of the weekly payment regard ought to be had to a pension to which the applicant was entitled under the corporation superannuation scheme out of the fire brigade fund. This fund was provided partly by the dividends on an invested fund and partly by contributions of the men out

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—continued.

of their pay, any deficiency being made up by the corporation out of the city rate. In an arbitration under the Act :—

Held, that so far as the pension was provided for by payments made by the corporation, it was "payment, allowance, or benefit" received from the employers which ought to be regarded in fixing the amount of the weekly payment of compensation under Sched. I., clause 3.

Dictum of Lord Loreburn in *Considine v. McInerney* [1916] 2 A. C. 162 explained. *WATTS v. MANCHESTER CORPORATION* - C. A.

[1917] 1 K. B. 791 ; 86 L. J. (K. B.) 669 ;

[1917] W. C. & Ins. Rep. 151 ; 10

B. W. C. C. 191 ; 116 L. T. 578 ;

[1917] W. N. 84 ; 33 T. L. R. 238

Incapacity—Possibility of supervening incapacity—Workman deprived of use of one eye by accident—Able to earn the same wages as before accident owing to abnormal state of the labour market—Suspensory order—Workmen's Compensation Act, 1906, Sched. I., clauses 1 (b) and 16.

A workman was deprived of the use of one eye by accident arising out of and in the course of his employment. The employers paid him compensation for nearly a year; they then ceased to make the weekly payments. The workman brought an arbitration. The arbitrator found that at the cessation of payment the workman was fit for work and had been invited to resume his former work, and that it was not proved that the workman's earning capacity in the open market had been affected. The workman did not move for a suspensory order :—

Held, that though in the present state of the labour market the workman might not have lost his earning capacity, in a normal market his wage-earning capacity might be impaired, and the case remitted to the arbitrator to consider whether or not a suspensory order should be pronounced.

Dempsey v. Caldwell & Co., 1914 S. C. 28.

MULLIGAN v. GLASGOW CORPORATION

Ct. Sess. (Sc.) 10 B. W. C. C. 475 ; [1917]

W. C. & Ins. Rep. 312

Partial incapacity—Mode of assessment—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., clause 3.

Appeal from a decision of the C. A. [1917] 1 K. B. 450 reversing an award of the Nuneaton County Court judge under the Workmen's Compensation Act, 1906.

In Sept., 1915, the appellant, who was earning 35s. a week as a coal-getter, lost an eye by an accident within the Act, and was paid 17s. 6d. a week by his employers, the respondents. In Dec., 1915, he resumed work at 20s. 5d. a week, but was discharged by the respondents in Feb., 1916, whereupon he entered the service of another employer as a horse-driver at 30s. a week, and applied for compensation under the Act.

The respondents opposed the application on the ground that the appellant was no longer incapacitated from earning the same wages as before the accident.

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The county court judge found that but for the accident the appellant would have earned 8s. 6d. a day at the coal face, and that he could now earn as a packer 7s. 5d. a day, and he awarded the appellant 5s. a week.

The C. A. held that the appellant was not entitled to any compensation.

The H. L. reversed the decision of the C. A. and restored the award of the county court judge. *HEATHCOTE v. HAUNCHWOOD COLLIERIES, LD.* - H. L. (E.) [1917] W. N. 318; 62 S. J. 53

Partial incapacity from weak heart unconnected with accident—Workmen's Compensation Act, 1906, Sched. I., clause 3.

In estimating the amount of compensation to which an injured workman was entitled, the learned county court judge found that the man's capacity to earn was reduced to four-fifths of normal by reason of a condition of the heart unconnected with the accident. He subtracted the amount the man was able to earn, taking into consideration the reduced capacity owing to heart trouble, from the amount the man would have been earning but for the accident, and awarded compensation accordingly. In ascertaining the latter amount, however, he did not take into consideration the reduction of one-fifth due to the heart trouble :—

Held, the amounts found by the judge were questions of fact from which there was no appeal, but the omission to deduct the one-fifth from both amounts was a slip, and the county court judge's award should be altered accordingly. *HOYLAND BRICK CO. v. WARD*

C. A. 10 B. W. C. C. 327

Quantum—Omission to make declaration of liability—Costs—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58).

A man employed on a steam barge met with an accident on Jun. 12, 1916, and injured the index finger of his right hand. He had previously injured the remaining fingers of that hand. He received compensation at 15s. a week until Aug. 21, 1916, and signed receipts in which he accepted the payments as being half his weekly earnings. On Aug. 21 the employers stopped the payments of compensation, and on Sept. 21 the workman commenced proceedings for compensation at the rate of 1l. a week. On Oct. 3 the employers' doctor saw the man, and found him to be fit for work, and he was offered suitable work on Oct. 5. The employers paid 5l. 5s. into Court with a denial of liability. The evidence as to wages was that the workman had received 114l. in the year preceding the accident, but was expected to employ a mate; but the man said he had been unable to get a mate since the war started, and had run the barge himself.

The county court judge held that the proper rate of compensation was 15s. a week, and awarded that sum for the period from Aug. 21 to Oct. 5; but, as the employers had paid in sufficient money to meet it, he dismissed the application with costs. Subsequently he stated that he had inadvertently overlooked the fact that the man's other three fingers were injured,

WORKMEN'S COMPENSATION (Compensation)
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and said that if he had remembered that, he would have made a declaration of liability and no order as to costs. On hearing that, the employers offered to submit to a declaration of liability and to pay the costs up to the date of the payment in, if they received the costs subsequent to that date. The workman refused this offer :—

Held, that the county court judge was justified in awarding compensation at the rate of 15s. a week, and that there must be a declaration of liability, but no costs either in the county court or the C. A. *WEST v. FELLOWS, MORTON & CLAYTON, LD.* - C. A. [1917]

W. C. & Ins. Rep. 96; 10 B. W. C. C. 120

Railway passenger porter — "Tips" sanctioned by employers—Average weekly earnings—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., pars. 1 (b), 2.

In assessing the compensation payable to a ry. porter under the Workmen's Compensation Act, 1906, the Court is entitled to take into account, as part of his earnings, gratuities received by him from passengers, where the system of giving gratuities to porters is sanctioned by the ry. co.

Decision of the C. A., 86 L. J. (K. B.) 1006, affirmed. *GREAT WESTERN RY. CO. v. HELPS*

H. L. (E.) [1917] W. N. 363; 34 T. L. R. 118; 62 S. J. 120

Redemption.

"Weekly payment"—Agreement to make weekly payment and provide other benefits—Workman's right to review—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., pars. 16, 17.

The right to redeem a weekly payment conferred on an employer by par. 17 of Sched. I. to the Workmen's Compensation Act, 1906, extends to every weekly payment which may be reviewed under par. 16, and is not limited to the case where the weekly payment is the sum total of the compensation agreed upon or awarded.

In 1910 a workman met with an accident which resulted in a broken ankle. His earnings prior to the accident were 1l. 16s. 4d. a week. The employers paid him half wages until Oct., 1913. In Oct., 1913, an agreement was made between the employers and the workman by which the employers agreed (1.) to find him a house near the colliery; (2.) to find him suitable light work at which he could sit down; (3.) to pay him 8s. 10d. a week compensation; and (4.) to pay him wages at a rate which would enable him to earn on an average 1l. 7s. 6d. a week. The workman did not insist on the first stipulation of the agreement, and had not found it necessary to insist on having work at which he could sit down. The employers found him suitable work and paid him his wages and the 8s. 10d. a week. In Nov., 1916, the employers applied to the county court judge, under par. 17 of Sched. I. to the Workmen's Compensation Act, 1906, that their liability therefor might be redeemed, on the footing that the incapacity was permanent. The county court judge by

WORKMEN'S COMPENSATION (Compensation)
—continued.

his award found that permanent incapacity was established to the extent of at least the weekly payment of 8s. 10d., and ordered redemption of that payment at a lump sum of 221l. 6s., but made a declaration that the redemption was without prejudice to the continuing validity of the remaining terms of the agreement, and also to any further liability of the employers to pay further compensation to the workman, if at any time it should be found that his capacity had been diminished below the average weekly earning capacity of 1l. 7s. 6d. in consequence of the old injury:—

Held, that the award must be set aside on the grounds (1.) that the county court judge had not found that the incapacity was permanent, and (2.) that, as an award must be final and conclusive, he had no jurisdiction to insert in it a declaration as to future liability. *W. J. Held*, also (Bankes L.J. dissenting), that the 8s. 10d. a week was a "weekly payment" within par. 17, and notwithstanding that it formed part only of the compensation to which the workman was entitled under the Act, and that it was accordingly subject to redemption.

Held, therefore, that the case must be remitted to the county court judge to determine whether the incapacity was permanent, and, if he came to the conclusion that it was not, then to award such a lump-sum as he thought fit; but that before making such an award an opportunity ought to be afforded the workman, if he deemed the weekly payment inadequate, of applying to review under par. 16. **CARLTON MAIN COLLIERY CO. v. CLAWLEY** - C. A. [1917] 2 K. B. 691; 86 L. J. (K. B.) 1294; [1917] W. C. & Ins. Rep. 256; 10 B. W. C. 324; 117 L. T. 324; [1917] W. N. 213; 33 T. L. R. 448; 61 S. J. 629

Review.

Award finding condition due to accident—Application for review alleging condition due to disease—No change of circumstances—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., par. 16.

In 1915 a boy claimed 12s. 6d. a week compensation for a fractured hip caused by accident in his employment, alleging total incapacity. The employers denied the incapacity and disputed the amount claimed, but consented to an award of 7s. 6d. a week. At the hearing a doctor gave evidence for the employers that the boy was suffering from coxa vara as the result of rickets. The county court judge awarded the boy 12s. 6d. a week. In 1917 the employers applied to review on the ground that the boy was not now suffering from the effects of the accident. At the hearing the same doctor gave the same evidence as he did in 1915. The arbitrator refused to review on the ground that he was being asked to find that the boy was suffering from coxa vara due to rickets, when by the award of 1915 it had been decided that he was suffering from coxa vara due to accident:—

Held, that the arbitrator was right, as the same issue was raised by the application to C.C.D.

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review which had been decided by the award, and there had been no change of circumstances since the award. **LINTHORPE DINSDALE SMELTING CO. v. HOY** - C. A. 86 L. J. (K. B.) 995; [1917] W. C. & Ins. Rep. 212; 10 B. W. C. 350; 117 L. T. 234

Incapacity for physical work—"Suitable employment"—Offer to find by employers—Earning capacity of workman—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., par. 3.

A workman met with an accident in Mar., 1915, in the course of his employment, which incapacitated him from doing physical work, and weekly compensation was paid to him by his employers under an agreement filed in the Court. In Dec., 1915, the employers offered him superintending work in their factory without physical work, at his old rate of wages, which was refused by the workman. The employers applied for review and diminution of the weekly payment. It appeared that the offer previously made by the employers had been withdrawn, but at the hearing the employers' counsel renewed the offer to give the man superintending work at his former rate of wages. The county court judge found that the work which had been offered to the man was suitable employment for him to do, but that he had no earning capacity in the open market, and, overlooking the offer made on the employers' behalf, refused to diminish the weekly payment:—

Held, that the judge should not have disregarded the offer by the employers to find the workman suitable employment at his former rate of wages, and that the case must go back to him to be reconsidered. **JENKINSON v. F. STEINER & CO.** - C. A. [1917] W. C. & Ins. Rep. 104

Minor workman—Compensation paid at rate fixed by agreement down to Apr. 11, 1916—Finding by arbitrator that workman had attained full earning capacity at date of accident—Finding that owing solely to a general rise of wages workman could have earned a larger wage at date of review than at date of accident—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., par. 16.

Held, that the fact that the workman had attained full earning capacity at the date of the accident did not per se deprive him of the benefit of the proviso contained in par. 16 of Sched. I. of the statute, and that the arbitrator was entitled in his discretion to give or deny effect to the proviso in view of the whole circumstances of the case. **QUINN v. JOHN WATSON, LD. BURKE v. WILSONS AND CLYDE COAL CO.**

Ct. Sess. (Sc.) [1917] W. C. & Ins. Rep. 57; 10 B. W. C. 422

New trial—Injury by accident—Plater's helper—Loss of an eye—Incapacity for work—Conflicting medical evidence—Private examination by arbitrator of workman physically, and also as to his symptoms—Award based on arbitrator's own view—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58).

A plater's helper lost an eye by accident in his employment. Liability was admitted, and full compensation for total incapacity paid for a

WORKMEN'S COMPENSATION (Compensation)
—continued.

time, when the employers applied to review and terminate or diminish the compensation. The arbitrator, after hearing conflicting medical evidence, examined the man alone in his private room—not only physically, but also as to his symptoms—and then gave judgment against the employers, basing it, not upon the medical evidence, but upon his own view that the man's account of his symptoms was genuine:—

Held, that there must be a new trial. **EARLE'S SHIPBUILDING AND ENGINEERING CO. v. WALKER**
C. A. [1917] W. C. & Ins. Rep. 54;
10 B. W. C. C. 73

Partial incapacity—Weekly payments—General rise in wages in workman's trade since date of disablement—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., par. 3.

Held, that the arbitrator was entitled to take the general rise of wages into account in fixing the amount of the weekly payment. **WOODLEE COAL AND COKE CO. v. McNEILL - Ct. Sess. (Sc.)**
[1917] W. C. & Ins. Rep. 129;
10 B. W. C. C. 454; 62 S. J. 7

Affirmed on appeal - - - H. L. (Sc.)
[1917] W. N. 296; 34 T. L. R. 10

Weekly payment—Application to review—Change of circumstances—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), Sched. I., clauses 3, 16.

Upon an application to review a weekly payment in a case of partial incapacity under Sched. I., clause 16, of the Workmen's Compensation Act, 1906, the fact that since the last award there has been a substantial alteration in the rate of wages common to the trade in which the workman is employed is one which the arbitrator is not only entitled but bound to take into consideration. Such an alteration is a change of circumstances which gives jurisdiction to entertain an application to review.

Dicta of Cozens-Hardy M.R. and Buckley L.J. in Radcliffe v. Pacific Steam Navigation Co. [1910] 1 K. B. 685 disapproved.

Bevan v. Energlyn Colliery Co. [1912] 1 K. B. 63 applied. TARR v. CORY BROTHERS & Co.
C. A. [1917] 2 K. B. 774; 86 L. J. (Ch.)
1340; 117 L. T. 513; [1917]
W. N. 263

Contracting-out Scheme.

Injury to workmen—Subsequent alteration of rules—Change in rate of compensation claim by workman for compensation under new rules—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 3.

A workman employed at a colliery was totally incapacitated for work owing to an accident at the colliery on Jun. 12, 1912. At the date of his accident a contracting-out scheme, constituted according to the provisions of s. 3 of the Workmen's Compensation Act, 1906, was in force at the colliery, under which compensation was payable to workmen injured by accidents. In Jun., 1913, the rules of the contracting-out scheme were altered, the rate of compensation being substantially increased. The workman claimed to be paid compensation under the revised rules at the increased rate:—

WORKMEN'S COMPENSATION (Contracting-out Scheme)—continued.

Held, that the workman was entitled to be paid compensation in accordance with the rate provided in the revised rules as from the date when such rules came into operation. **BEARD v. COMMITTEE OF MANAGEMENT OF CONTRACTING-OUT SCHEME OF WEST YORKSHIRE COLLIERIES OF J. & J. CHARLESWORTH, LD. - Bailhache J.**
[1917] W. C. & Ins. Rep. 222

"Scheme . . . substituted for Provisions of Act"—Workman subject to scheme—Compensation awarded under scheme—Jurisdiction of county court—Workmen's Compensation Act, 1906, s. 3, sub-s. 1.

A workman, having entered into an agreement with the Admiralty subjecting himself to the conditions of an authorized scheme for compensation in lieu of the provisions of the Act, was injured and awarded compensation under the scheme. He then sought to withdraw from the scheme, and applied for arbitration under the Act. The county court judge dismissed the application on the ground that he had no jurisdiction to hear it:—

Held, the decision of the county court judge was correct. **BARTON v. LORDS COMMRS. OF THE ADMIRALTY - C. A. 10 B. W. C. C. 314**

Costs.

See above, Compensation, col. 507.

Full particulars of result of accident not given—Award for applicant—Employers allege they were misled—Applicant ordered to pay costs—Discretion as to costs not judicially exercised—Workmen's Compensation Act, 1906, Sched. II., par. 7.

A workgirl met with an accident on Aug. 17 1916, whereby her hand was severely injured. The employers paid compensation up to Jan. 17, 1917. Then, when the doctor reported that she was fit for some kinds of light work, the employers stopped paying compensation. Subsequently her finger had to be amputated, and other minor operations had to be performed. She did not inform her solicitor of this, and these things were not given in the particulars. But the correspondence showed that the respondents were informed that her hand was in a serious condition, and that her own doctor and the infirmary doctor were of opinion that the girl was not able to undertake light work. The county court judge awarded for the applicant, but found that the employers had been misled, and ordered the applicant to pay the costs of the county court hearing:—

Held, that the judge's discretion as to costs had not been exercised judicially, and the order as to costs must be set aside. **FAWCETT v. HALEY & SONS - C. A. 10 B. W. C. C. 381**

Declaration of Liability.

See above, Compensation, col. 507.

Dependants.

Death by accident—Daughter of deceased workman—Keeping house for parent—Dependency—Total or partial—Capacity of applicant to main-

WORKMEN'S COMPENSATION (Dependants)—
continued.

tain herself—Workmen's Compensation Act, 1906 (6 *Edw. 7*, c. 58), *Sched. I., par. 1 (a).*

The applicant claimed compensation as sole dependant of her father, who was killed by accident at the respondents' colliery. Nine years before her father's death the applicant, who was then in domestic service, left her situation to go home and nurse her mother. The mother died a year afterwards, and the applicant then remained at home to keep her father's house. He clothed and provided her with board and lodging and gave her pocket money. She was a strong, healthy woman, and the county court judge, being of opinion that she was able to maintain herself by her own work and that her father's earnings were not therefore the sole source to which she could have looked for maintenance either at the time of his death or during the time when she kept his house, held that she was only a partial dependant, and awarded her compensation on that footing:—

Held, on appeal, that it was irrelevant to consider whether the applicant could have supported herself. She was in fact, at the time of her father's death, totally dependent on his earnings.

Moyes v. William Dixon, Ltd. (1905) 42 S. L. R. 319 followed. *SIMMS v. LILLESHELL COAL CO.* - C. A. [1917] 2 K. B. 368; 86 L. J. (K. B.) 965; [1917] W. C. & Ins. Rep. 218; 10 B. W. C. C. 321; 117 L. T. 231; [1917] W. N. 171

Partial dependency—Claim by parent—Amount of assessment—Services rendered by deceased to applicant.

A boy of fourteen years of age was fatally injured by an accident arising out of and in the course of his employment. He was employed during four months of the year at the rate of 7s. a week plus his dinner and tea, and he handed over all his earnings to his mother, the applicant, who was a small farmer. The county court judge found that the mother and brothers and sisters of the deceased were partially dependent on him, and he awarded 150*l.* compensation to be apportioned amongst them:—

Held, that at the time of the accident there was partial dependency; that the Court was not precluded by law from taking into consideration the custom of the country that boys of the age of the deceased usually assisted in farm work on their parents' holdings; and that so long as the county court judge had given an amount within the maximum, the C. A. had no right to inquire into the quantum of the award. *HEALY v. REILLY* - C. A. (Ir.) [1917] 2 I. R. 446

Sum paid into Court as compensation for death of workman—Apportionment between dependants—Custody of infant child—Workmen's Compensation Act, 1906 (6 *Edw. 7*, c. 58), *Sched. I., clauses 5, 8, 9.*

A sum of money was paid into Court as compensation for the death of a workman. There were only two dependants—the widow and an infant child. The arbitrator, without apportioning the sum, made an order giving the custody of the child to its grandfather, and

WORKMEN'S COMPENSATION (Dependants)—
continued.

giving him 1*l.* a month for its maintenance, and the widow 3*l.* a month for her maintenance:—

Held, that the arbitrator had no power under the Workmen's Compensation Act, 1906, to make any order depriving its statutory guardian of the custody of an infant, and that the sum must be apportioned between the dependants. *FLEMING v. ROBURITE CO.* - C. A. [1917]

W. C. & Ins. Rep. 82; 10 B. W. C. C. 176

Employment.

Contract to pay benefit to workman in master's employment at certain date—Workman at that date absent from work and receiving compensation for injury—Termination of employment—Workmen's Compensation Act, 1906 (6 *Edw. 7*, c. 58).

The fact that a workman stays away from work and receives compensation from his employers during temporary incapacity for work resulting from injury received by him during the course of his employment does not of itself terminate the employment, even though the contract of employment is merely at will.

Decision of Div. Ct. (Lush and Rowlatt JJ.) [1916] 1 K. B. 906 affirmed. *WARBURTON AND ANOTHER v. CO-OPERATIVE WHOLESALE SOCIETY, LD.* - C. A. [1917] 1 K. B. 663; 86 L. J. (K. B.) 529; [1917] W. C. & Ins. Rep. 124; 10 B. W. C. C. 93; 116 L. T. 107; [1917] W. N. 11; 33 T. L. R. 124; 61 S. J. 145

Evidence.

See above, Accident—Evidence, col. 496.

Indemnity.

— *Negligence—Dock.*

See NEGLIGENCE, col. 285.

— *Request by shipowners to charterers to unload cargo—Accident to charterers' servant.*

See INDEMNITY, col. 197.

Industrial Disease.

Nystagmus—Liability to recur—Report of medical referee—Workmen's Compensation Act, 1906 (6 *Edw. 7*, c. 58), *ss. 1, 8; Sched. I., par. 16.*

A miner in 1913 contracted nystagmus, an industrial disease, in the course of his employment, and was awarded weekly compensation. In 1916 the employers applied for termination of the weekly payment on the ground that the man had completely recovered from nystagmus. He was examined by the medical referee, who reported that he had completely recovered from nystagmus and his vision was normal, but that he had not recovered from blepharospasm, and that this was a strong indication that if he were to resume underground work the nystagmus would return. The county court judge upon this report found that the man was liable to a return of nystagmus, and, the man being able to do work above ground, diminished the compensation. The employers appealed, and contended that on the medical referee's certificate the weekly payment should have been terminated:—

WORKMEN'S COMPENSATION (Industrial Diseases)—continued.

Held, that the award of the judge was not justified by the medical referee's certificate, and that there must be a new trial of the case. *CHORLEY COLLIERY CO. v. BOLTON* - C. A. [1916] W. C. & Ins. Rep. 329

Medical Assessor.

"Accident"—Death from peritonitis—Condition consistent with death due to natural causes—No evidence of accident—Opinion of doctors—Function of medical assessor—Workmen's Compensation Act, 1906, s. 1, sub-s. 1.

In an arbitration before a judge sitting with a medical assessor, two doctors gave evidence describing the condition of the deceased, which showed that death was due to peritonitis. They also stated, as their medical opinion, that the man's condition was due to some external violence, such as a blow. There was, in fact, no direct evidence that death was due to an accident. The medical assessor advised the judge that all the symptoms which had been spoken to in evidence were equally consistent with death from natural causes. The judge accepted the opinion of the medical assessor and dismissed the application for compensation on the ground that there was no evidence of any accident:—

Held, that the judge was entitled (but not bound) to accept the view expressed by the medical assessor, and having done so, was perfectly justified, in this case, in dismissing the application. *CARPENTER v. WANDSWORTH B. C.* - C. A. 10 B. W. C. C. 340; 117 L. T. 183

Burden of proof—Incapacity resulting from accident—Accident to scalp of head—Supervening insanity—Onus of proof—Insanity supervening while workman still incapacitated for work as result of injury—Finding by arbitrator that the workman had failed to prove that the insanity was due to the accident—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 1, sub-s. 1, and Sched. I, clause 1 (b).

Held, that the onus lay on the workman to prove that the incapacity resulting from insanity was due to the accident, and that accordingly he was not entitled to compensation. *BROWNLEE v. COLTNESS IRON CO.* - Ct. Sess. (Sc.) [1917] W. C. & Ins. Rep. 235. 10 B. W. C. C. 462

Workman injured by slate falling from employer's building on left foot—Sock stuck in wound—Blood-poisoning—Death—Medical assessor's opinion on cause of death—Workmen's Compensation Act, 1906, Sched. I, clause 1 (a).

A workman while at work was injured by a slate which fell from a building of his employers upon his left foot. His sock stuck in the wound in his foot caused by the slate. He was able to resume work, but a few days later became ill apparently from blood-poisoning, and died the tenth day after the accident. The wound on the foot had healed up. A post-mortem examination was made, which in the opinion of the surgeon who performed the examination did not establish any connection between the injury to the foot and the cause of death, mucopus of

WORKMEN'S COMPENSATION (Medical Assessor)—continued.

the lungs. The medical assessor stated that in his opinion the death was explicable on the evidence relative to the accident, and that the accident was inferentially a contributory cause of the death:—

Held, that there was evidence upon which it could competently be found that the death of the workman was caused by the accident to his left foot.

Observations per the Lord President on the functions of a medical assessor. *CONNELLY v. ALEXANDER CROSS & SONS, LD.*

Ct. Sess. (Sc.) 10 B. W. C. C. 436;

[1917] W. C. & Ins. Rep. 119

Medical Referee.

"Question . . . settled by agreement"—Parties agree to submit to decision of medical referee—Dissatisfied workman applies for arbitration—Judge dismisses case on referee's report without hearing medical evidence—Workmen's Compensation Act, 1906, s. 1, sub-s. 3.

A dispute arose as to whether a workman with an injured eye was fit for work; proceedings were commenced, and then the parties agreed in writing to submit the question to a medical referee and abide by his decision. On receiving the report the workman was dissatisfied, and applied to the judge, who dismissed the case on the report of the medical referee, and refused to hear medical evidence tendered by the workman:—

Held, the application had been properly dismissed. *RENSHALL v. SPENCER*

C. A. 10 B. W. C. C. 164; [1917] W. C. & Ins. Rep. 233

New Trial.

See above, **Compensation**, col. 510.

Notice of Claim.

See above, **Accident—Claim—Notice**, col. 494.

Recorded Agreement.

See above, **Compensation**, col. 592.

Remedies.

Employer insured—Both insurance company and employer in liquidation—Insurance company first to go into liquidation—Right of proof for compensation—Liability of insurance company—Continued liability of employer—Company—Winding-up—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 5, sub-ss. 1, 2, 3, 5.

The effect of s. 5 of the Workmen's Compensation Act, 1906, is that, where an employer has entered into a contract with any insurers in respect of any liability under the Act, in the event of the employer becoming bankrupt, or, being a co., having commenced to be wound up, the claim of the workman is against the insurers only, whether in liquidation or not. He has no right to prove in the bankruptcy or liquidation of the employer, except in the case provided for by sub-s. 2, which applies only when the insurance does not cover the whole of the employer's liability. It makes no difference that the

WORKMEN'S COMPENSATION (Remedies)—
continued.

insurers have gone into liquidation before the bankruptcy or liquidation of the employer.

In re Pethick, Dix & Co. [1915] 1 Ch. 26 followed. *In re RENISHAW IRON CO. CLAIMS OF STOTHARD AND WILSON - Neville J.* [1917] 1 Ch. 199; 86 L. J. (Ch.) 190; 10 B. W. C. C. 20; 115 L. T. 755; [1916] W. N. 387; 61 S. J. 147

Suspensory Award.

See above, Arbitration, col. 501.

Workman.

Contract of service—Control—Expert well-sinker—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 13.

The applicant, who held himself out to the public as an expert well-sinker, entered into an agreement with the respondent to sink a well for him. All the tackle was supplied by the applicant, who during the course of the operations was in no way subject to the control of the respondent. The applicant was paid 8s. a day in addition to his board, and he employed an assistant to whom he paid 3s. a day. Having met with an accident at the work, the applicant claimed compensation. The county court judge found that there was no contract of service between the applicant and the respondent:—

Held, that as a matter of law the Court was not bound, on the evidence, to find that the applicant was a servant of the respondent. *HUGHES v. QUINN - C. A. (Ir.)* [1917] 2 I. R. 442

Injury by accident—Compensation—“Contract of service”—Illegal contract—Boy employed as canal boatman—Hours of employment—Employment of Children Act, 1903 (3 Edw. 7, c. 45), s. 3—*Contravention—Workmen's Compensation Act, 1906* (6 Edw. 7, c. 58), s. 13.

If the contract under which a workman is employed is illegal, it is not a contract for service within s. 13 of the Workmen's Compensation Act, 1906.

Kemp v. Lewis [1915] 3 K. B. 543 followed. *POUNTNEY v. TURTON - C. A.* [1917] W. N. 353; 34 T. L. R. 103

Remuneration—Remuneration exceeding 250l. a year—Contract for less than a year—Probable average earnings for rest of year less than earnings under contract—Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), s. 13.

In order to bring a man within the exception in the definition of a workman in s. 13 of the Workmen's Compensation Act, 1906,—“‘Workman’ does not include any person employed otherwise than by way of manual labour whose remuneration exceeds two hundred and fifty pounds a year”—it must be shown that he was at the date of the accident entitled to remuneration of more than that amount under a contract of service, which contract, unless determined by notice or other extraneous fact, would continue

WORKMEN'S COMPENSATION (Workman)—
continued.

in force for a year. *GRIFFITH v. PENRHYN CASTLE (OWNERS) - C. A.* [1917] 1 K. B. 474; 86 L. J. (K. B.) 449; [1917] W. C. & Ins. Rep. 115; 10 B. W. C. C. 111; 116 L. T. 169; [1917] W. N. 11

WORKS—Stoppage of by Minister of Munitions. See CONTRACT, col. 108.

WRECK—Receiver of Wreck—Right of police to prosecute—Powers of Board of Trade—Criminal law—Practice.

The right to prosecute for taking possession of wreck, and unlawfully failing to deliver the same to the Receiver of Wreck under s. 518 (b) of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), is not confined to the Board of Trade or their officers.

An officer of police can prosecute in such a case without any authorization from the Board of Trade. *DOWLING v. GRIFFIN* Div. Ct. (Ir.) [1917] 2 I. R. 609

WRIT—Service out of the jurisdiction—Claim for poor rate, urban improvement rate, and sanitary rate—Obligation affecting land—Contract made or entered into within the jurisdiction—Practice—O. XI., r. 1, sub-ss. (b) and (f).

The Killiney U. D. C. having applied, under O. XI., r. 1, of the R. S. C., for liberty to serve out of the jurisdiction a writ for the recovery of poor rate, urban improvement rate, and sanitary rate from the intended defts.:—

Held by the C. A., affirming the K. B. D., that the claim was not one either in respect of an obligation affecting lands, or under an implied contract made or entered into within the jurisdiction, and that the application should be refused. *In re THE KILLINEY U. D. C. v. KIRKWOOD AND MOOREHEAD - C. A.* [1917] 2 I. R. 614

WRITING—Contract.

See LANDLORD AND TENANT, col. 249, and SALE OF GOODS, col. 369.

WRONG—Party taking advantage of his own See CONTRACT, col. 113.

YACHT—Enemy—“Navire de commerce”—Hague Convention. See PRIZE COURT, col. 326.

YEAR TO YEAR—Tenancy from. See LANDLORD AND TENANT, col. 241.

YEW TREES—Overhanging—Cattle eating leaves. See NUISANCE, col. 291.

ZEPPELIN—Fire caused by bomb from. See INSURANCE (FIRE), col. 202, and LANDLORD AND TENANT, col. 245.

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